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Federal Register

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2024-1669; Amdt. No. 93-104A]

RIN 2120-AM01

Valparaiso, Florida Terminal Area; Correction

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

ACTION: Final rule; correction.

SUMMARY: On June 24, 2024, the Federal Aviation Administration (FAA) published the subject final rule in the **Federal Register**. In that final rule, the FAA amended five boundary coordinates contained within the Valparaiso, Florida, terminal area to ensure that the published boundaries matched the actual relation to both the U.S. shoreline and overlying restricted airspace to maintain aeronautical chart accuracy and consistency but failed to amend a sixth point. This action corrects that error. Additionally, the FAA intended to make this final rule effective to align with the 56-day chart cycle. The original rule's effective date does not align with a chart cycle publication date, and this action corrects it to align with the October 31, 2024, chart cycle.

DATES: This correction is effective October 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Brian Konie, Airspace Rules & Regulations Manager (A), AJV-P21, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-8783; email brian.konie@faa.gov.

SUPPLEMENTARY INFORMATION: On June 24, 2024, the Federal Aviation Administration (FAA) published the final rule, Valparaiso, Florida Terminal Area, in the **Federal Register**.¹

In the final rule, the FAA amended five points in § 93.81(b) as set out in the following table:

Location	Original points	New points
§ 93.81(b)(1)	lat. 30°22'47" N, long. 86°51'30" W lat. 30°23'46" N, long. 86°38'15" W lat. 30°20'51" N, long. 86°38'50" W lat. 30°19'31" N, long. 86°51'30" W	lat. 30°22'47" N, long. 86°51'30" W lat. 30°23'46" N, long. 86°38'15" W lat. 30°20'47" N, long. 86°38'51" W * lat. 30°19'45" N, long. 86°51'30" W *
§ 93.81(b)(2)	lat. 30°25'01" N, long. 86°38'12" W lat. 30°25'01" N, long. 86°25'00" W lat. 30°25'01" N, long. 86°22'26" W lat. 30°19'46" N, long. 86°23'45" W lat. 30°20'51" N, long. 86°38'50" W lat. 30°23'46" N, long. 86°38'15" W	lat. 30°25'01" N, long. 86°38'12" W lat. 30°25'01" N, long. 86°25'00" W lat. 30°25'01" N, long. 86°22'26" W lat. 30°19'41" N, long. 86°23'46" W ** lat. 30°20'47" N, long. 86°38'51" W * lat. 30°23'46" N, long. 86°38'15" W
§ 93.81(b)(3)	lat. 30°25'01" N, long. 86°22'26" W lat. 30°22'01" N, long. 86°08'00" W lat. 30°19'16" N, long. 85°56'00" W lat. 30°11'01" N, long. 85°56'00" W lat. 30°19'46" N, long. 86°23'45" W	lat. 30°25'01" N, long. 86°22'26" W lat. 30°22'01" N, long. 86°08'00" W lat. 30°19'16" N, long. 85°56'00" W lat. 30°11'08" N, long. 85°56'00" W * lat. 30°19'41" N, long. 86°23'46" W *

* Indicates the five points revised in the final rule.
** Indicates the sixth point revised in correction of the final rule.

While the FAA revised the five updated coordinates contained within the table (denoted with a single asterisk (*)), the FAA failed to revise a sixth point contained in § 93.81(b)(2). This document corrects that error. This sixth point (denoted by a double asterisk (**)), located at lat. 30°19'46" N, long. 86°23'45" W; is hereby amended to lat. 30°19'41" N, long. 86°23'46" W.

Further, the FAA made the final rule effective August 23, 2024, 60 days after publication. However, that effective date

does not align with the FAA's charting cycle. Thus, the FAA is correcting the effective date to align with the charting cycle.

Corrections

In FR Doc. 2024-13737, published at 89 FR 52359 on June 24, 2024, the following corrections are made:

1. On page 52360, in the first column, the **DATES** section is corrected to read as follows:

DATES: Effective 0901 UTC, October 31, 2024.

2. On page 52362, in the second column, in instruction 2 for § 93.81,

paragraph (b)(2) is corrected to read as follows:

§ 93.81 [Corrected]

* * * * *

(b) * * *

(2) The center section would include that airspace extending upward from the surface to but not including 18,000 feet MSL, bounded by a line beginning at: Latitude 30°25'01" N, Longitude 86°38'12" W; to Latitude 30°25'01" N, Longitude 86°25'00" W; to Latitude 30°25'01" N, Longitude 86°22'26" W; to Latitude 30°19'41" N, Longitude 86°23'46" W; then 3 NM from and parallel to the shoreline to Latitude

¹ Valparaiso, Florida, Terminal Area final rule, 89 FR 52359 (Jun. 24, 2024).

30°20'47" N, Longitude 86°38'51" W; to Latitude 30°23'46" N, Longitude 86°38'15" W; to the beginning.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f) and 40103 in Washington, DC.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2024-15034 Filed 7-10-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2024-0573]

RIN 1625-AA08

Special Local Regulation; Marine Events; Annual Bayview Mackinac Race, Lake Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the annual Bayview Yacht Club Port Huron to Mackinac Race. This special local regulation is necessary to safely control vessel movements in the vicinity of the race and provide for the safety of the general boating public and commercial shipping. During this enforcement period, no person or vessel may enter the regulated area without the permission of the Coast Guard Patrol Commander (PATCOM).

DATES: The regulation in 33 CFR 100.902 will be enforced from 10 a.m. through 3 p.m. on July 20, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Tracy Girard, Waterway Management Division, U.S. Coast Guard Sector Detroit, 110 Mt. Elliott Street, Detroit, MI at (313) 568-9564 or tracy.m.girard@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.902 for the Annual Bayview Mackinac Race from 10 a.m. through 3 p.m. on July 20, 2024. This notice of enforcement is necessary to safely control vessel movements in the vicinity of the race and provide for the safety of the general boating public and commercial shipping. This notice of

enforcement applies to all U.S. navigable waters of the Black River, St. Clair River, and lower Lake Huron, bound by a line starting at latitude 042°58'47" N, longitude 082°26'0" W; then easterly to latitude 042°58'24" N, longitude 082°24'47" W; then northward along the International Boundary to latitude 043°02'48" N, longitude 082°23'47" W; then westerly to the shoreline at approximate location latitude 043°02'48" N, longitude 082°26'48" W; then southward along the U.S. shoreline to latitude 042°58'54" N, longitude 082°26'01" W; then back to the beginning.

In order to ensure the safety of spectators and participating vessels, the Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander (PATCOM). Vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer. The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." Vessels permitted to transit the regulated area will operate at no wake speed and in a manner which will not endanger participants in the event or any other craft. The rules contained above shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

This notice of enforcement is issued under the authority of 33 CFR 100.902 and 5 U.S.C. 552(a). If the District Commander, Captain of the Port, or PATCOM determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: July 3, 2024.

Richard P. Armstrong,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2024-15118 Filed 7-10-24; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2024-0367]

Safety Zone; Annual Fireworks Displays Within the Sector Columbia River Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce safety zone regulations at various locations in the Sector Columbia River Captain of the Port Zone from July 3, 2024 to July 27, 2024, to provide for the safety of life on navigable waters during fireworks displays. The regulation for fireworks displays within the Thirteenth Coast Guard District designates safety zones and identifies approximate dates for these events. Specific dates and times are identified in this notice. These regulations prohibit persons and vessels from being in the safety zones unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: The regulations in 33 CFR 165.1315 will be enforced for the safety zones identified in the **SUPPLEMENTARY INFORMATION** section below for the dates and times specified.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Lieutenant Carlie Gilligan, Waterways Management Division, Sector Columbia River, Coast Guard; telephone 503-240-9319, email SCRWWM@USCG.MIL.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce safety zones in 33 CFR 165.1315 for the following events, during the designated enforcement periods, and within a 450-yard radius of the launch site at the listed locations. This action is being taken to provide for the safety of life on navigable waterways during these events.

Our regulation for fireworks displays within the Thirteenth Coast Guard District designates the regulated areas and identifies the approximate dates for these events. The specific dates and times are specified below. These safety zones are subject to enforcement at least 1 hour prior to the start and 1 hour after the conclusion of the events.

TABLE—DATES AND DURATIONS OF ENFORCEMENT FOR 33 CFR 165.1315 SAFETY ZONES AT VARIOUS LOCATIONS WITHIN THE SECTOR COLUMBIA RIVER CAPTAIN OF THE PORT ZONE IN 2024

Event name (typically)	Event location	Date of event	Latitude	Longitude
The Mill Casino Independence Day	North Bend, OR.	July 3, 2024 9:30 p.m. to 11:00 p.m.	43°23'42" N	124°12'55" W
Waldport 4th of July	Waldport, OR	July 3, 2024 9:30 p.m. to 11:00 p.m.	44°25'31" N	124°04'44" W
Astoria-Warrenton 4th of July Fireworks	Astoria, OR ...	July 4, 2024 9:30 p.m. to 11:00 p.m.	46°11'34" N	123°49'28" W
Bandon 4th of July	Bandon, OR ..	July 4, 2024 9:30 p.m. to 11:00 p.m.	43°07'29" N	124°25'05" W
Brookings July 4th Fireworks	Brookings, OR	July 4, 2024 9:30 p.m. to 11:00 p.m.	42°02'39" N	124°16'14" W
Cascade Locks 4th of July Fireworks	Cascade Locks, OR.	July 4, 2024 9:30 p.m. to 11:00 p.m.	45°40'15" N	121°53'43" W
Clatskanie Heritage Days Fireworks	Clatskanie, OR.	July 4, 2024 9:30 p.m. to 11:00 p.m.	46°6'17" N	123°12'02" W
Fireworks Over the Bay	Coos Bay, OR	July 4, 2024 9:30 p.m. to 11:00 p.m.	43°22'06" N	124°12'24" W
Florence Independence Day Celebration	Florence, OR	July 4, 2024 9:30 p.m. to 11:00 p.m.	43°58'09" N	124°05'50" W
Fort Dalles Fourth of July	The Dalles, OR.	July 4, 2024 9:30 p.m. to 11:00 p.m.	45°36'18" N	121°10'23" W
Hood River 4th of July	Hood River, OR.	July 4, 2024 9:30 p.m. to 11:00 p.m.	45°42'58" N	121°30'32" W
July 4th Party at the Port of Gold Beach	Gold Beach, OR.	July 4, 2024 9:30 p.m. to 11:00 p.m.	42°25'30" N	124°25'03" W
Kennewick River of Fire Fireworks	Kennewick, WA.	July 4, 2024 9:30 p.m. to 11:30 p.m.	46°13'37" N	119°08'47" W
Lincoln City 4th of July	Lincoln City, OR.	July 4, 2024 9:30 p.m. to 11:00 p.m.	44°55'28" N	124°01'31" W
Newport 4th of July	Newport, OR	July 4, 2024 9:30 p.m. to 11:00 p.m.	44°37'31" N	124°02'5" W
Oaks Park Association 4th of July	Portland, OR	July 4, 2024 9:30 p.m. to 11:00 p.m.	45°28'22" N	122°39'59" W
Port Orford 4th of July Jubilee	Port Orford, OR.	July 4, 2024 9:30 p.m. to 11:00 p.m.	42°44'31" N	124°29'30" W
St. Helens 4th of July Fireworks	St. Helens, OR.	July 4, 2024 9:30 p.m. to 11:00 p.m.	45°51'54" N	122°47'26" W
Waterfront Blues Festival Fireworks	Portland, OR	July 4, 2024 9:30 p.m. to 11:00 p.m.	45°30'42" N	122°40'14" W
Waverly Country Club 4th of July Fireworks	Milwaukie, OR	July 4, 2024 9:30 p.m. to 11:00 p.m.	45°27'03" N	122°39'18" W
Yachats 4th of July	Yachats, OR	July 4, 2024 9:30 p.m. to 11:00 p.m.	44°18'38" N	124°06'27" W
Ilwaco Independence Day at the Port	Ilwaco, WA	July 6, 2024 9:30 p.m. to 11:00 p.m.	46°18'17" N	124°02'00" W
Rainier Days in the Park	Rainier, OR ...	July 13, 2024 9:30 p.m. to 11:00 p.m.	46°05'46" N	122°56'18" W
Toledo Summer Festival	Toledo, OR ...	July 20, 2024 9:30 p.m. to 11:00 p.m.	44°37'08" N	123°56'24" W
Garibaldi Days Fireworks	Garibaldi, OR	July 27, 2024 9:30 p.m. to 11:00 p.m.	45°33'13" N	123°54'56" W

All coordinates are listed in reference Datum NAD 1983.

During the enforcement periods, as reflected in § 165.1315, no person may enter or remain in the safety zones created by this section or bring, cause to be brought, or allow to remain in the regulated areas created by this section,

any vehicle, vessel, or object unless authorized by the Captain of the Port Sector Columbia River or a designated representative. In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of these enforcement

periods via the Local Notice to Mariners and Broadcast Notice to Mariners.

Dated: June 14, 2024.

J.W. Noggle,

Captain, U.S. Coast Guard, Captain of the Port Sector Columbia River.

[FR Doc. 2024-15119 Filed 7-10-24; 8:45 am]

BILLING CODE 9110-04-P

Proposed Rules

Federal Register

Vol. 89, No. 133

Thursday, July 11, 2024

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA-2024-1794]

Draft Policy Statement on Special Class Rotorcraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The FAA invites public comment on the agency's draft policy statement PS-AIR-21.17-02, "Special Class Rotorcraft." This proposed policy would identify certain rotorcraft as special class.

DATES: Comments must be received on or before September 9, 2024.

ADDRESSES: Send comments identified with "PS-AIR-21.17-02" and docket number FAA-2024-1794 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: The FAA will post all comments received without change to 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 DocketsInfo.dot.gov.

FOR FURTHER INFORMATION CONTACT:

James Blyn, Product Policy Management: Airplanes, GA, Emerging Aircraft, and Rotorcraft AIR-62B, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 10101 Hillwood Pkwy., Fort Worth, Texas 76177; telephone (817) 222-5762; email james.blyn@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

Advancements in technology have resulted in the development of electrically powered rotorcraft with more than two main rotor systems. Although these aircraft are rotorcraft as defined in 14 CFR part 1, the FAA has found that they are not typical of the rotorcraft designs utilizing main and auxiliary rotors envisaged by the rotorcraft airworthiness standards in 14 CFR parts 27 and 29.

Rotorcraft type-certificated in the normal and transport categories under parts 27 and 29, respectively, have primarily been helicopters that use a single main rotor and an anti-torque rotor or two main rotors to provide lift and thrust for horizontal flight. Helicopters create lift by changing the pitch of the main rotor blades and move into horizontal flight by varying the pitch of the main rotor blades throughout their rotation.

Over the past few years, the FAA has been working with potential applicants on certification projects for normal category rotorcraft designs that create lift and thrust by using multiple (three or more) rotor systems. Instead of varying the pitch of the rotor blade throughout its rotation, these aircraft create directional control for horizontal movement by varying the power at each rotor. These aircraft also rely on electric or hybrid-electric propulsion and not (or not only) a traditional internal combustion engine. Additionally, they employ advanced flight control system designs, such as fly-by-wire, that are highly integrated with the electric propulsion system. These designs provide extensive flight envelop protection and introduce high levels of automation.

During these projects, the FAA has found that existing type certification criteria do not accommodate or apply to these rotorcraft. For example, only 60 percent of the requirements in part 27

may be appropriate for these designs. Some of the remaining requirements are not applicable and would need exemptions from the regulatory requirements. For other requirements, due to the novel and unusual design, applicants would need special conditions to modify the existing standards. Furthermore, additional airworthiness criteria, for which there are no standards in part 27, would require special conditions to provide an appropriate safety standard to address the novel and unusual design features.

The FAA amended 14 CFR part 21 at amendment 21-60 to add procedural requirements for the issuance of type certificates for special classes of aircraft in § 21.17(b). In the Final Rule, the FAA explained that it intended the special class category to include, in part, those aircraft that would not be eligible for certification under existing standards due to their unique, novel, or unusual design features. The FAA further stated that the "decision to type certificate an aircraft in either the special class aircraft category or under part 23 of the [CFR] is entirely dependent upon the aircraft's unique, novel, and/or unusual design features." (52 FR 8040, March 13, 1987).

The rotorcraft described in the paragraphs above have those unique, novel, or unusual design features the special class category was designed to accommodate. Type certificating these rotorcraft under part 27 or 29 with exemptions and special conditions would be a lengthy administrative process. The resulting certification basis will likely contain a portion of the existing airworthiness standards combined with a significant number of special conditions containing unique airworthiness criteria. Moreover, the special class process provides the public greater visibility of the complete certification basis. The level of safety provided by the certification basis would be the same under either process.

Accordingly, the FAA has determined that special class rotorcraft as defined in this policy are sufficiently different from the normal and transport category rotorcraft envisaged by parts 27 and 29, respectively, to be considered a "special class" of rotorcraft under § 21.17(b). This finding is consistent with the definition of "class" in part 1 as used with respect to the certification of aircraft. The FAA has concluded that

designating these rotorcraft as a special class under § 21.17(b) would provide a more practical means of type certification and is in the public interest. Additionally, an applicant for a special class rotorcraft may use propellers in place of rotors for the rotorcraft's lift and directional control.

Comments Invited

The FAA invites the public to submit comments on the draft policy statement, as specified in the **ADDRESSES** section. Commenters should include the subject line "PS-AIR-21.17-02" and the docket number FAA-2024-1794 on all comments submitted to the FAA. The most helpful comments will reference a specific portion of the draft document, explain the reasons for any recommended change, and include supporting data. The FAA will consider all comments received on or before the closing date before issuing the final policy statement. The FAA will also consider comments filed late if it is possible to do so without incurring expense or delay.

You may examine the draft advisory circular on the agency's public website and in the docket as follows:

- At <http://www.regulations.gov> in Docket Number FAA-2024-1794.
- At http://www.faa.gov/aircraft/draft_docs/.

Issued in Kansas City, Missouri, on June 26, 2024.

Patrick Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024-14489 Filed 7-10-24; 8:45 am]

BILLING CODE 4910-13-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2024-0255; FRL-12071-01-R1]

Air Plan Approval; New Hampshire; Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve most of a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision updates the State regulation containing ambient air quality standards. EPA is proposing to approve all the State's updated standards, except the primary annual fine particle (PM_{2.5}) standard, which we

propose to conditionally approve because it does not match EPA's current National Ambient Air Quality Standard for PM_{2.5}. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before August 12, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2024-0255 at <https://www.regulations.gov>, or via email to Alison Simcox at simcox.alison@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Alison C. Simcox, Air Quality Branch, Air and Radiation Division (Mail Code 5-MD), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109-3912, telephone number: (617) 918-1684; email address: simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever

"we," "us," or "our" is used, we mean EPA.

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- I. Background and Purpose
- II. Evaluation of New Hampshire's Submittal
- III. Proposed Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background and Purpose

On December 22, 2022, New Hampshire Department of Environmental Services (NH DES) submitted to EPA a SIP revision updating its Env-A 300, "Ambient Air Quality Standards". The State revised this regulation to incorporate into its SIP revised National Ambient Air Quality Standards (NAAQS).

In its December 2022 SIP submittal, NH DES adopted the following:

- (1) Coarse fine particle (PM₁₀) primary (health-based) and secondary (welfare-based) 24-hour standards of 150 micrograms per cubic meter (µg/m³),
 - (2) Fine particle (PM_{2.5}) primary annual standard of 12 µg/m³,
 - (3) PM_{2.5} secondary annual standard of 15 µg/m³,
 - (4) PM_{2.5} primary and secondary 24-hour standards of 35 µg/m³,
 - (5) Sulfur dioxide (SO₂) primary 1-hour standard of 75 parts per billion (ppb),
 - (6) SO₂ secondary 3-hour standard of 0.5 parts per million (ppm),
 - (7) CO primary 8-hour standard of 9 ppm,
 - (8) CO primary 1-hour standard of 35 ppm,
 - (9) Nitrogen Dioxide (NO₂) primary annual of 53 ppb,
 - (10) NO₂ primary 1-hour standard of 100 ppb,
 - (11) NO₂ secondary annual standard of 0.053 ppm (equivalent to 100 µg/m³),
 - (12) Ozone primary and secondary 8-hour standard of 0.070 ppm,
 - (13) Lead primary and secondary rolling 3-month standard of 0.15 µg/m³.
- New Hampshire's Env-A 300, "Ambient Air Quality Standards," was originally approved into the New Hampshire SIP on March 15, 1983 (48 FR 10830). Updates to the rule were approved into the New Hampshire SIP on August 19, 1994 (59 FR 42766) and on June 24, 2014 (79 FR 35695).

II. Evaluation of New Hampshire's Submittal

EPA has reviewed New Hampshire's revised Env-A 300 and has determined that it is consistent with the NAAQS in 40 CFR part 50 for all standards except the PM_{2.5} primary annual standard. On March 6, 2024, EPA strengthened the PM_{2.5} primary annual standard to 9.0 µg/m³ (89 FR 16202).

Pursuant to a May 16, 2024, letter to EPA from NH DES, within a year from the effective date of EPA's conditional approval of the December 2022 submittal, the State commits to submitting a revision to Env-A 300 that includes the current primary annual standard for the PM_{2.5} NAAQS. Therefore, EPA proposes to approve all of New Hampshire's revised rule, except for the primary annual PM_{2.5} standard, which we propose to conditionally approve.

III. Proposed Action

EPA proposes to approve most of New Hampshire's revised Env-A 300, "Ambient Air Quality Standards," submitted by the State on December 22, 2022, as a revision to the New Hampshire SIP. We propose to conditionally approve the primary annual PM_{2.5} standard, provided that the State submits in a timely manner the portion of Env-A 300 that includes the current EPA PM_{2.5} primary annual NAAQS of 9.0 µg/m³.

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

Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA conditionally approves the commitment in a final rulemaking action, the State must meet its commitment to submit a revision to Env-A 300 that includes the current PM_{2.5} primary annual NAAQS. If the State fails to do so, this action will become a disapproval one year from the date of final approval. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved New Hampshire SIP. EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new legislative authority. If EPA disapproves the new submittal, the conditionally approved regulation will also be disapproved at that time. If EPA

approves the submittal, the regulation will be fully approved in its entirety and replace the conditionally approved program in the SIP.

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference New Hampshire's regulation Env-A 300, as discussed in Sections I and II of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

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

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

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

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 2, 2024.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2024–14990 Filed 7–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R05–OAR–2022–0974; FRL–12039–01–R5]

Air Plan Approval; Minnesota; Second Period Regional Haze Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Regional Haze State Implementation Plan (SIP) revision submitted by the Minnesota Pollution Control Agency (Minnesota) on December 20, 2022, as satisfying applicable requirements under the Clean Air Act (CAA) and EPA’s Regional Haze Rule (RHR) for the program’s second implementation period. Minnesota’s SIP submission addresses the requirement that states must periodically revise their long-term strategies for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility, including regional haze, in mandatory Class I Federal areas. The SIP submission also addresses other applicable requirements for the second implementation period of the regional haze program. EPA is taking this action pursuant to sections 110 and 169A of the CAA.

DATES: Written comments must be received on or before August 12, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0974 at <https://www.regulations.gov>, or via email to langman.michael@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from the docket. EPA may publish any comment received to its public docket.

Do not submit to EPA’s docket at <https://www.regulations.gov> any information you consider to be confidential business information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Air and Radiation Division (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, rau.matthew@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

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

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I. What action is EPA proposing?

On December 20, 2022, Minnesota submitted a revision to its SIP to address regional haze for the second implementation period. Minnesota made this SIP submission to satisfy the requirements of the CAA’s regional haze program pursuant to CAA sections 169A and 169B and 40 CFR 51.308. EPA proposes to find that the Minnesota Regional Haze SIP submission for the second implementation period meets the applicable statutory and regulatory requirements. Thus, EPA proposes to approve Minnesota’s submission into its SIP.

II. Background and Requirements for Regional Haze Plans*A. Regional Haze Background*

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation’s mandatory Class I Federal areas, which include certain national parks and wilderness areas.¹ CAA 169A. The CAA establishes as a national goal the “prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.” CAA 169A(a)(1). The CAA further directs EPA to promulgate regulations to assure reasonable progress toward meeting this national goal. CAA 169A(a)(4). On December 2, 1980, EPA promulgated regulations addressing visibility

¹ Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA 162(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

impairment in mandatory Class I Federal areas (hereinafter referred to as “Class I areas”) that is “reasonably attributable” to a single source or small group of sources. (45 FR 80084, December 2, 1980). These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase of EPA’s efforts to address visibility impairment. In 1990, Congress added section 169B to the CAA to further address visibility impairment, specifically, impairment from regional haze. CAA 169B. EPA promulgated the RHR, codified at 40 CFR 51.308,² on July 1, 1999. (64 FR 35714, July 1, 1999). These regional haze regulations are a central component of EPA’s comprehensive visibility protection program for Class I areas.

Regional haze is a visibility impairment that is produced by a multitude of anthropogenic sources and activities that are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse particulate matter (PM) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide (SO₂), nitrogen oxides (NO_x), and, in some cases, volatile organic compounds (VOC) and ammonia (NH₃)). Fine particle precursors react in the atmosphere to form fine particulate matter (PM_{2.5}), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.³

² In addition to the generally applicable regional haze provisions at 40 CFR 51.308, EPA also promulgated regulations specific to addressing regional haze visibility impairment in Class I areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are applicable only for specific jurisdictions’ regional haze plans submitted no later than December 17, 2007, and thus are not relevant here.

³ There are several ways to measure the amount of visibility impairment, *i.e.*, haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b_{ext}) is a metric used to for expressing visibility and is measured in inverse megameters (Mm⁻¹). EPA’s Guidance on Regional Haze State Implementation Plans for the Second Implementation Period (“2019 Guidance”) offers the flexibility for the use of light extinction in certain cases. Light extinction can be simpler to use in calculations than deciviews, since it is not a logarithmic function. See, e.g., 2019 Guidance at 6, 19, <https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period>, EPA Office of Air Quality Planning and Standards, Research Triangle Park

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I areas are located and those states “the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility” in a Class I area to periodically submit SIP revisions to address such impairment. CAA 169A(b)(2);⁴ see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative regional haze SIP revisions); (64 FR 35768, July 1, 1999). Under the CAA, each SIP submission must contain “a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,” CAA 169A(b)(2)(B); the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the best available retrofit technology (BART). CAA 169A(b)(2)(A); 40 CFR 51.308(d), (e). States’ first regional haze SIPs were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing updated long-term strategies originally due July 31, 2018, and every ten years thereafter. (64 FR 35768, July 1, 1999). EPA established in the 1999 RHR that all states either have Class I areas within their borders or “contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area”; therefore, all states must submit regional haze SIPs.⁵ 64 FR 35721, July 1, 1999.

Much of the focus in the first implementation period of the regional haze program, which ran from 2007 through 2018, was on satisfying states’ BART obligations. First implementation period SIPs were additionally required to contain long-term strategies for making reasonable progress toward the national visibility goal, of which BART is one component. The core required elements for the first implementation period SIPs (other than BART) are laid out in 40 CFR 51.308(d). Those provisions required that states containing Class I areas establish reasonable progress goals (RPGs) that

(August 20, 2019). The formula for the deciview is $10 \ln (b_{ext})/10 \text{ Mm}^{-1}$. 40 CFR 51.301.

⁴ The RHR expresses the statutory requirement for states to submit plans addressing out-of-state class I areas by providing that states must address visibility impairment “in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State.” 40 CFR 51.308(d), (f).

⁵ In addition to each of the fifty states, EPA also concluded that the Virgin Islands and District of Columbia must also submit regional haze SIPs because they either contain a Class I area or contain sources whose emissions are reasonably anticipated to contribute regional haze in a Class I area. See 40 CFR 51.300(b), (d)(3).

are measured in deciviews (dv) and reflect the anticipated visibility conditions at the end of the implementation period including from implementation of states’ long-term strategies. The first planning period RPGs were required to provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. In establishing the RPGs for any Class I area in a state, the state was required to consider four statutory factors: the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. CAA 169A(g)(1); 40 CFR 51.308(d)(1).

States were also required to calculate baseline (using the five year period of 2000–2004) and natural visibility conditions (*i.e.*, visibility conditions without anthropogenic visibility impairment) for each Class I area, and to calculate the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is known as the uniform rate of progress (URP) and is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I area.⁶ 40 CFR 51.308(d)(1)(i)(B), (d)(2). The 1999 RHR also provided that States’ long-term strategies must include the “enforceable emissions limitations, compliance, schedules, and other measures as necessary to achieve the reasonable progress goals.” 40 CFR 51.308(d)(3). In establishing their long-term strategies, states are required to consult with other states that also contribute to visibility impairment in a given Class I area and include all measures necessary to obtain their

⁶ EPA established the URP framework in the 1999 RHR to provide “an equitable analytical approach” to assessing the rate of visibility improvement at Class I areas across the country. The starting point for the URP analysis is 2004 and the endpoint was calculated based on the amount of visibility improvement that was anticipated to result from implementation of existing CAA programs over the period from the mid-1990s to approximately 2005. Assuming this rate of progress would continue into the future, EPA determined that natural visibility conditions would be reached in 60 years, or 2064 (60 years from the baseline starting point of 2004). However, EPA did not establish 2064 as the year by which the national goal *must* be reached. 64 FR 35714 at 35731–32, July 1, 1999. That is, the URP and the 2064 date are not enforceable targets but are rather tools that “allow for analytical comparisons between the rate of progress that would be achieved by the state’s chosen set of control measures and the URP.” (82 FR 3078 at 3084, January 10, 2017).

shares of the emission reductions needed to meet the RPGs. 40 CFR 51.308(d)(3)(i), (ii). Section 51.308(d) also contains seven additional factors states must consider in formulating their long-term strategies, 40 CFR 51.308(d)(3)(v), as well as provisions governing monitoring and other implementation plan requirements. 40 CFR 51.308(d)(4). Finally, the 1999 RHR required states to submit periodic progress reports—SIP revisions due every five years that contain information on states' implementation of their regional haze plans and an assessment of whether anything additional is needed to make reasonable progress, see 40 CFR 51.308(g), (h), and to consult with the Federal Land Manager(s)⁷ (FLMs) responsible for each Class I area according to the requirements in CAA 169A(d) and 40 CFR 51.308(i).

On January 10, 2017, EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The 2017 rulemaking made several changes to the requirements for regional haze SIPs to clarify states' obligations and streamline certain regional haze requirements. The revisions to the regional haze program for the second and subsequent implementation periods focused on the requirement that SIPs contain long-term strategies for making reasonable progress towards the national visibility goal. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f). Among other changes, the 2017 RHR Revisions adjusted the deadline for states to submit their second implementation period SIPs from July 31, 2018, to July 31, 2021, clarified the order of analysis and the relationship between RPGs and the long-term strategy, and focused on making visibility improvements on the days with the most *anthropogenic* visibility impairment, as opposed to the days with the most visibility impairment overall. EPA also revised requirements of the visibility protection program related to periodic progress reports and FLM consultation. The specific requirements applicable to second implementation period regional haze SIP submissions are addressed in detail below.

⁷ EPA's regulations define "Federal Land Manager" as "the Secretary of the department with authority over the Federal Class I area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission." 40 CFR 51.301.

EPA provided guidance to the states for their second implementation period SIP submissions in the preamble to the 2017 RHR Revisions as well as in subsequent, stand-alone guidance documents. In August 2019, EPA issued "Guidance on Regional Haze State Implementation Plans for the Second Implementation Period" ("2019 Guidance").⁸ On July 8, 2021, EPA issued a memorandum containing "Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period" ("2021 Clarifications Memo").⁹ Additionally, EPA further clarified the recommended procedures for processing ambient visibility data and optionally adjusting the URP to account for international anthropogenic and prescribed fire impacts in two technical guidance documents: the December 2018 "Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program" ("2018 Visibility Tracking Guidance"),¹⁰ and the June 2020 "Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program" and associated Technical Addendum ("2020 Data Completeness Memo").¹¹

As explained in the 2021 Clarifications Memo, EPA intends the second implementation period of the regional haze program to secure meaningful reductions in visibility impairing pollutants that build on the significant progress states have achieved

⁸ Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. <https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period> EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

⁹ Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. <https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf>. EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

¹⁰ Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. <https://www.epa.gov/visibility/technical-guidance-tracking-visibility-progress-second-implementation-period-regional> EPA Office of Air Quality Planning and Standards, Research Triangle Park. (December 20, 2018).

¹¹ Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. <https://www.epa.gov/visibility/memo-and-technical-addendum-ambient-data-usage-and-completeness-regional-haze-program> EPA Office of Air Quality Planning and Standards, Research Triangle Park (June 3, 2020).

to date. The Agency also recognizes that analyses regarding reasonable progress are state-specific and that, based on state and sources' individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from state-to-state. While there exist many opportunities for states to leverage both ongoing and upcoming emission reductions under other CAA programs, the Agency expects states to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements. See generally 2021 Clarifications Memo. This is consistent with Congress's determination that a visibility protection program is needed in addition to the CAA's National Ambient Air Quality Standards (NAAQS) and Prevention of Significant Deterioration programs, as further emission reductions may be necessary to adequately protect visibility in Class I areas throughout the country.¹²

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I areas can be transported over long distances, successful implementation of the regional haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I areas and the emissions that impact visibility in those areas. To address regional haze, states need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),¹³ which include representation from state and Tribal governments, EPA, and FLMs, were developed in the lead-up to the first implementation period to address regional haze. RPOs evaluate technical information to better understand how emissions from State and Tribal land impact Class I areas across the country, pursue the development of regional strategies to reduce emissions of

¹² See, e.g., H.R. Rep. No. 95-294 at 205 ("In determining how to best remedy the growing visibility problem in these areas of great scenic importance, the committee realizes that as a matter of equity, the national ambient air quality standards cannot be revised to adequately protect visibility in all areas of the country."), ("the mandatory class I increments of [the PSD program] do not adequately protect visibility in class I areas").

¹³ RPOs are sometimes also referred to as "multi-jurisdictional organizations," or MJOs. For the purposes of this action, the terms RPO and MJO are synonymous.

particulate matter and other pollutants leading to regional haze, and help states meet the consultation requirements of the RHR.

The Lake Michigan Air Directors Consortium (LADCO), one of the five RPOs described above, is a collaborative effort of state governments, Tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Midwest. LADCO member states are Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. The LADCO Regional Haze Technical Workgroup also includes Tribes, Iowa, EPA, U.S. National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), and U.S. Forest Service (USFS).

III. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and EPA's regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands are required to submit regional haze SIPs satisfying the applicable requirements for the second implementation period of the regional haze program by July 31, 2021. Each state's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA 169A(b)(2)(B). To this end, 40 CFR 51.308(f) lays out the process by which states determine what constitutes their long-term strategies, with the order of the requirements in 40 CFR 51.308(f)(1) through (3) generally mirroring the order of the steps in the reasonable progress analysis¹⁴ and (f)(4) through (6) containing additional, related requirements. Broadly speaking, a state first must identify the Class I areas within the state and determine the Class I areas outside the state in which visibility may be affected by emissions from the state. These are the Class I areas that must be addressed in the state's long-term strategy. See 40 CFR 51.308(f), (f)(2). For each Class I area within its borders, a state must then calculate the baseline, current, and natural visibility conditions for that area, as well as the visibility improvement made to date and the URP. See 40 CFR 51.308(f)(1). Each state having a Class I area and/or emissions

that may affect visibility in a Class I area then develops a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility-impairing pollutants that the state has selected to assess for controls for the second implementation period. Additionally, as further explained below, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five "additional factors"¹⁵ that states must consider in developing their long-term strategies. See 40 CFR 51.308(f)(2). A state evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the state's long-term strategy. After a state has developed its long-term strategy, it then establishes RPGs for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.*, in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I area is located, but also for sources in other states that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2) and (3).

In addition to satisfying the requirements at 40 CFR 51.308(f) related to reasonable progress, the regional haze SIP revisions for the second implementation period must address the requirements in 40 CFR 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.308(i).

A state must submit its regional haze SIP and subsequent SIP revisions to EPA according to the requirements applicable to all SIP revisions under the CAA and EPA's regulations. See CAA 169A(b)(2); CAA 110(a). Upon EPA approval, a SIP is enforceable by the

Agency and the public under the CAA. If EPA finds that a state fails to make a required SIP revision, or if EPA finds that a state's SIP is incomplete or disapproves the SIP, the Agency must promulgate a Federal Implementation Plan (FIP) that satisfies the applicable requirements. CAA 110(c)(1).

A. Identification of Class I Areas

The first step in developing a regional haze SIP is for a state to determine which Class I areas, in addition to those within its borders, "may be affected" by emissions from within the state. In the 1999 RHR, EPA determined that all states contribute to visibility impairment in at least one Class I area, 64 FR 35714 at 35720–22, July 1, 1999, and explained that the statute and regulations lay out an "extremely low triggering threshold" for determining "whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State." 64 FR 35714 at 35721, July 1, 1999.

A state must determine which Class I areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the state. While the RHR does not require this evaluation to be conducted in any particular manner, EPA's 2019 Guidance provides recommendations for how such an assessment might be accomplished, including by using, where appropriate, the determinations previously made for the first implementation period. 2019 Guidance at 8–9. In addition, the determination of which Class I areas may be affected by a state's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to "document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects."

B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in 40 CFR 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this subsection apply only to states having Class I areas within

¹⁴ EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 40 CFR 51.308(d), "tracked the actual planning sequence." (82 FR 3078 at 3091, January 10, 2017).

¹⁵ The five "additional factors" for consideration in 40 CFR 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

their borders; the required calculations must be made for each such Class I area. EPA's 2018 Visibility Tracking Guidance¹⁶ provides recommendations to assist states in satisfying their obligations under 40 CFR 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. See 82 FR 3078 at 3103–05, January 10, 2017.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20 percent clearest (the 20 percent of monitored days in a calendar year with the lowest values of the deciview index) and 20 percent most impaired days (the 20 percent of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment).¹⁷ 40 CFR 51.301. A state must calculate visibility conditions for both the 20 percent clearest and 20 percent most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility conditions). 40 CFR 51.308(f)(1)(i), (iii). States must also calculate natural visibility conditions for the clearest and most impaired days,¹⁸ by estimating the conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data,

states must then calculate, for each Class I area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve to reach natural visibility conditions.

Using the data for the set of most impaired days only, states must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement, measured in *dv*, that would need to be achieved during each implementation period to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I area's rate of visibility improvement.¹⁹ Additionally, in the 2017 RHR Revisions, EPA provided states the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments, which must be approved by EPA, are intended to avoid any perception that states should compensate for impacts from international anthropogenic sources and to give states the flexibility to determine that limiting the use of wildland-prescribed fire is not necessary for reasonable progress. 82 FR 3078 at 3107 footnote 116, January 10, 2017.

EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in 40 CFR 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

C. Long-Term Strategy for Regional Haze

The core component of a regional haze SIP submission is a long-term strategy that addresses regional haze in each Class I area within a state's borders and each Class I area that may be affected by emissions from the state. The long-term strategy “must include

the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).” 40 CFR 51.308(f)(2). The amount of progress that is “reasonable progress” is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a “four-factor” analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by “enforceable emissions limitations, compliance schedules, and other measures” (*i.e.*, any additional compliance tools) in a state's long-term strategy in its SIP. 40 CFR 51.308(f)(2).

The regulation 40 CFR 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires states to consider “major and minor stationary sources or groups of sources, mobile sources, and area sources” of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed. As EPA previously explained, consistent with the first implementation period, EPA generally expects that each state will analyze at least SO₂ and NO_x in selecting sources and determining control measures. See 2019 Guidance at 12, 2021 Clarifications Memo at 4. A state that chooses not to consider at least these two pollutants should demonstrate why such consideration would be unreasonable. 2021 Clarifications Memo at 4.

While states have the option to analyze *all* sources, the 2019 Guidance explains that “an analysis of control measures is not required for every source in each implementation period,” and that “[s]electing a set of sources for analysis of control measures in each implementation period is . . . consistent with the Regional Haze Rule, which sets up an iterative planning process and anticipates that a state may

¹⁶ The 2018 Visibility Tracking Guidance references and relies on parts of the 2003 Tracking Guidance: “Guidance for Tracking Progress Under the Regional Haze Rule,” which can be found at <https://www.epa.gov/sites/default/files/2021-03/documents/tracking.pdf>.

¹⁷ This action also refers to the 20 percent clearest and 20 percent most anthropogenically impaired days as the “clearest” and “most impaired” or “most anthropogenically impaired” days, respectively.

¹⁸ The RHR at 40 CFR 51.308(f)(1)(ii) contains an error related to the requirement for calculating two sets of natural conditions values. The rule says, “most impaired days or the clearest days” where it should say “most impaired days and clearest days.” This is an error that was intended to be corrected in the 2017 RHR Revisions but did not get corrected in the final rule language. This is supported by the preamble text at 82 FR 3078 at 3098 January 10, 2017: “In the final version of 40 CFR 51.308(f)(1)(ii), an occurrence of “or” has been corrected to “and” to indicate that natural visibility conditions for both the most impaired days and the clearest days must be based on available monitoring information.”

¹⁹ Being on or below the URP is not a “safe harbor”; *i.e.*, achieving the URP does not mean that a Class I area is making “reasonable progress” and does not relieve a state from using the four statutory factors to determine what level of control is needed to achieve such progress. *See, e.g.*, 82 FR 3078 at 3093, January 10, 2017.

not need to analyze control measures for all its sources in a given SIP revision.” 2019 Guidance at 9. However, given that source selection is the basis of all subsequent control determinations, a reasonable source selection process “should be designed and conducted to ensure that source selection results in a set of pollutants and sources the evaluation of which has the potential to meaningfully reduce their contributions to visibility impairment.” 2021 Clarifications Memo at 3.

EPA explained in the 2021 Clarifications Memo that each state has an obligation to submit a long-term strategy that addresses the regional haze visibility impairment that results from emissions from within that state. Thus, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the state’s total contribution to visibility impairment in Class I areas. A state should not decline to select its largest in-state sources on the basis that there are even larger out-of-state contributors. 2021 Clarifications Memo at 4.²⁰

Thus, while states have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a state’s SIP submission include “a description of the criteria it used to determine which sources or groups of sources it evaluated.” The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance (Q/d) metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a state has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.²¹ This is

²⁰ Similarly, in responding to comments on the 2017 RHR Revisions EPA explained that “[a] state should not fail to address its many relatively low-impact sources merely because it only has such sources and another state has even more low-impact sources and/or some high impact sources.” Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) at 87–88.

²¹ The CAA provides that, “[i]n determining reasonable progress there shall be taken into consideration” the four statutory factors. CAA 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for

accomplished by considering the four factors: “the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.” CAA 169A(g)(1). EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.*, control options) for sources; “use of the terms ‘compliance’ and ‘subject to such requirements’ in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply to satisfy the CAA’s reasonable progress mandate.” 82 FR 3078 at 3091, January 10, 2017. Thus, for each source it has selected for four-factor analysis,²² a state must consider a “meaningful set” of technically feasible control options for reducing emissions of visibility impairing pollutants. 82 FR 3078 at 3088, January 10, 2017. The 2019 Guidance provides that “[a] state must reasonably pick and justify the measures that it will consider, recognizing that there is no statutory or regulatory requirement to consider all technically feasible measures or any particular measures. A range of technically feasible measures available to reduce emissions would be one way to justify a reasonable set.” 2019 Guidance at 29.

EPA’s 2021 Clarifications Memo provides further guidance on what constitutes a reasonable set of control options for consideration: “A reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions.” 2021 Clarifications Memo at 7. In addition to add-on controls and other retrofits (*i.e.*, new emissions reduction measures for

inclusion in its long-term strategy, *e.g.*, from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second planning period.

²² “Each source” or “particular source” is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have “the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.” 82 FR 3078 at 3088, January 10, 2017. However, not all approaches to grouping sources for four-factor analysis are necessarily reasonable; the reasonableness of grouping sources in any particular instance will depend on the circumstances and the manner in which grouping is conducted. If it is feasible to establish and enforce different requirements for sources or subgroups of sources, and if relevant factors can be quantified for those sources or subgroups, then states should make a separate reasonable progress determination for each source or subgroup. 2021 Clarifications Memo at 7–8.

sources), EPA explained that states should generally analyze efficiency improvements for sources’ existing measures as control options in their four-factor analyses, as in many cases such improvements are reasonable given that they typically involve only additional operation and maintenance costs. Additionally, the 2021 Clarifications Memo provides that states that have assumed a higher emissions rate than a source has achieved or could potentially achieve using its existing measures should also consider lower emissions rates as potential control options. That is, a state should consider a source’s recent actual and projected emission rates to determine if it could reasonably attain lower emission rates with its existing measures. If so, the state should analyze the lower emission rate as a control option for reducing emissions. 2021 Clarifications Memo at 7. EPA’s recommendations to analyze potential efficiency improvements and achievable lower emission rates apply to both sources that have been selected for four-factor analysis and those that have forgone a four-factor analysis on the basis of existing “effective controls.” See 2021 Clarifications Memo at 5, 10.

After identifying a reasonable set of potential control options for the sources it has selected, a state then collects information on the four factors with regard to each option identified. EPA has also explained that, in addition to the four statutory factors, states have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors.²³ The 2019 Guidance provides recommendations for the types of information that can be used to characterize the four factors (with or without visibility), as well as ways in which states might reasonably consider and balance that information to determine which of the potential control options is necessary to make reasonable progress. See 2019 Guidance at 30–36. The 2021 Clarifications Memo contains further guidance on how states can reasonably consider modeled visibility impacts or benefits in the context of a four-factor analysis. 2021 Clarifications Memo at 12–13, 14–15. Specifically, EPA explained that while visibility can reasonably be used when comparing and choosing between multiple reasonable control options, it should not be used to summarily reject controls that are reasonable given the four

²³ See, *e.g.*, Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016), Docket Number EPA–HQ–OAR–2015–0531, U.S. Environmental Protection Agency at 186; 2019 Guidance at 36–37.

statutory factors. 2021 Clarifications Memo at 13. Ultimately, while states have discretion to reasonably weigh the factors and to determine what level of control is needed, 40 CFR 51.308(f)(2)(i) provides that a state “must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.”

As explained above, 40 CFR 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to 40 CFR 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state’s long-term strategy and in its SIP.²⁴ If the outcome of a four-factor analysis is a new, additional emission reduction measure for a source, that new measure is necessary to make reasonable progress towards remedying existing anthropogenic visibility impairment and must be included in the SIP. If the outcome of a four-factor analysis is that no new measures are reasonable for a source, continued implementation of the source’s existing measures is generally necessary to prevent future emission increases and thus to make reasonable progress towards the second part of the national visibility goal: preventing future anthropogenic visibility impairment. See CAA 169A(a)(1). That is, when the result of a four-factor analysis is that no new measures are necessary to make reasonable progress, the source’s existing measures are generally necessary to make reasonable progress and must be included in the SIP. However, there may be circumstances in which a state can demonstrate that a source’s existing measures are *not* necessary to make reasonable progress. Specifically, if a state can demonstrate that a source will continue to implement its existing measures and will not increase its emissions rate, it may not be necessary to have those measures in the long-term strategy to

prevent future emissions increases and future visibility impairment. EPA’s 2021 Clarifications Memo provides further explanation and guidance on how states may demonstrate that a source’s existing measures are not necessary to make reasonable progress. See 2021 Clarifications Memo at 8–10. If the state can make such a demonstration, it need not include a source’s existing measures in the long-term strategy or its SIP.

As with source selection, the characterization of information on each of the factors is also subject to the documentation requirement in 40 CFR 51.308(f)(2)(iii). The reasonable progress analysis, including source selection, information gathering, characterization of the four statutory factors (and potentially visibility), balancing of the four factors, and selection of the emission reduction measures that represent reasonable progress, is a technically complex exercise, but also a flexible one that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, 40 CFR 51.308(f)(2)(iii) plays an important function in requiring a state to document the technical basis for its decision making so that the public and EPA can comprehend and evaluate the information and analysis the state relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the state relied to determine the measures necessary to make reasonable progress. This documentation requirement can be met through the provision of and reliance on technical analyses developed through a regional planning process, so long as that process and its output has been approved by all state participants. In addition to the explicit regulatory requirement to document the technical basis of their reasonable progress determinations, states are also subject to the general principle that those determinations must be reasonably moored to the statute.²⁵ That is, a state’s decisions about the emission reduction measures that are necessary to make reasonable progress must be consistent with the statutory goal of

remediating existing and preventing future visibility impairment.

The four statutory factors (and potentially visibility) are used to determine what emission reduction measures for selected sources must be included in a state’s long-term strategy for making reasonable progress. Additionally, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five “additional factors”²⁶ that states must consider in developing their long-term strategies: (1) emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment (RAVI); (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. The 2019 Guidance provides that a state may satisfy this requirement by considering these additional factors in the process of selecting sources for four-factor analysis, when performing that analysis, or both, and that not every one of the additional factors needs to be considered at the same stage of the process. See 2019 Guidance at 21. EPA provided further guidance on the five additional factors in the 2021 Clarifications Memo, explaining that a state should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas. Additionally, states generally should not rely on these additional factors to summarily assert that the state has already made sufficient progress and, therefore, no sources need to be selected or no new controls are needed regardless of the outcome of four-factor analyses. 2021 Clarifications Memo at 13.

Because the air pollution that causes regional haze crosses state boundaries, 40 CFR 51.308(f)(2)(ii) requires a state to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area.

²⁶The five “additional factors” for consideration in 40 CFR 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

²⁴ States may choose to, but are not required to, include measures in their long-term strategies beyond just the emission reduction measures that are necessary for reasonable progress. See 2021 Clarifications Memo at 16. For example, states with smoke management programs may choose to submit their smoke management plans to EPA for inclusion in their SIPs but are not required to do so. See, e.g., 82 FR 3078 at 3108–09, January 10, 2017 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to adopt such practices or programs into their SIPs, although they may elect to do so).

²⁵ See *Arizona ex rel. Darwin v. U.S. EPA*, 815 F.3d 519, 531 (9th Cir. 2016); *Nebraska v. U.S. EPA*, 812 F.3d 662, 668 (8th Cir. 2016); *North Dakota v. EPA*, 730 F.3d 750, 761 (8th Cir. 2013); *Oklahoma v. EPA*, 723 F.3d 1201, 1206, 1208–10 (10th Cir. 2013); cf. also *Nat’l Parks Conservation Ass’n v. EPA*, 803 F.3d 151, 165 (3d Cir. 2015); *Alaska Dep’t of Env’tl. Conservation v. EPA*, 540 U.S. 461, 485, 490 (2004).

Consultation allows for each state that impacts visibility in an area to share whatever technical information, analyses, and control determinations may be necessary to develop coordinated emission management strategies. This coordination may be managed through inter- and intra-RPO consultation and the development of regional emissions strategies; additional consultations between states outside of RPO processes may also occur. If a state, pursuant to consultation, agrees that certain measures (e.g., a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a state has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that state must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). EPA will consider the technical information and explanations presented by the submitting state and the state with which it disagrees when considering whether to approve the state's SIP. See *id.*; 2019 Guidance at 53. Under all circumstances, a state must document in its SIP submission all substantive consultations with other contributing states. 40 CFR 51.308(f)(2)(ii)(C).

D. Reasonable Progress Goals

Reasonable progress goals “measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis.” 82 FR 3078 at 3091, January 10, 2017. Their primary purpose is to assist the public and EPA in assessing the reasonableness of states' long-term strategies for making reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(3)(iii) and (iv). States in which Class I areas are located must establish two RPGs, both in dv—one representing visibility conditions on the clearest days and one representing visibility on the most anthropogenically impaired days—for each area within their borders. 40 CFR 51.308(f)(3)(i). The two RPGs are intended to reflect the projected impacts, on the two sets of days, of the emission reduction measures the state

with the Class I area, as well as all other contributing states, have included in their long-term strategies for the second implementation period.²⁷ The RPGs also account for the projected impacts of implementing other CAA requirements, including non-SIP based requirements. Because RPGs are the modeled result of the measures in states' long-term strategies (as well as other measures required under the CAA), they cannot be determined before states have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress. See 2021 Clarifications Memo at 6.

For the second implementation period, the RPGs are set for 2028. Reasonable progress goals are not enforceable targets, 40 CFR 51.308(f)(3)(iii); rather, they “provide a way for the states to check the projected outcome of the [long-term strategy] against the goals for visibility improvement.” 2019 Guidance at 46. While states are not legally obligated to achieve the visibility conditions described in their RPGs, 40 CFR 51.308(f)(3)(i) requires that “[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.” Thus, states are required to have emission reduction measures in their long-term strategies that are projected to achieve visibility conditions on the most impaired days that are better than the baseline period and shows no degradation on the clearest days compared to the clearest days from the baseline period. The baseline period for the purpose of this comparison is the baseline visibility condition—the annual average visibility condition for the period 2000–2004. See 40 CFR 51.308(f)(1)(i), 82 FR 3078 at 3097–98, January 10, 2017.

So that RPGs may also serve as a metric for assessing the amount of progress a state is making towards the national visibility goal, the RHR requires states with Class I areas to

²⁷ RPGs are intended to reflect the projected impacts of the measures all contributing states include in their long-term strategies. However, due to the timing of analyses and of control determinations by other states, other on-going emissions changes, a particular state's RPGs may not reflect all control measures and emissions reductions that are expected to occur by the end of the implementation period. The 2019 Guidance provides recommendations for addressing the timing of RPG calculations when states are developing their long-term strategies on disparate schedules, as well as for adjusting RPGs using a post-modeling approach. 2019 Guidance at 47–48.

compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (i.e., if visibility conditions are improving more slowly than the rate described by the URP), each state that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each state contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide “a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.” The 2019 Guidance provides suggestions about how such a “robust demonstration” might be conducted. See 2019 Guidance at 50–51.

The 2017 RHR, 2019 Guidance, and 2021 Clarifications Memo also explain that projecting an RPG that is on or below the URP based on only on-the-books and/or on-the-way control measures (i.e., control measures already required or anticipated before the four-factor analysis is conducted) is not a “safe harbor” from the CAA's and RHR's requirement that all states must conduct a four-factor analysis to determine what emission reduction measures constitute reasonable progress. The URP is a planning metric used to gauge the amount of progress made thus far and the amount left before reaching natural visibility conditions. However, the URP is not based on consideration of the four statutory factors and therefore cannot answer the question of whether the amount of progress being made in any particular implementation period is “reasonable progress.” See 82 FR 3078 at 3093, 3099–3100, January 10, 2017; 2019 Guidance at 22; 2021 Clarifications Memo at 15–16.

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements

under this subsection apply either to states with Class I areas within their borders, states with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. A state with Class I areas within its borders must submit with its SIP revision a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all Class I areas within the state. SIP revisions for such states must also provide for the establishment of any additional monitoring sites or equipment needed to assess visibility conditions in Class I areas, as well as reporting of all visibility monitoring data to EPA at least annually. Compliance with the monitoring strategy requirement may be met through a state's participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40 CFR 51.308(f)(6), (f)(6)(i), and (iv). The IMPROVE monitoring data is used to determine the 20% most anthropogenically impaired and 20% clearest sets of days every year at each Class I area and tracks visibility impairment over time.

All states' SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the state to regional haze visibility impairment in affected Class I areas. 40 CFR 51.308(f)(6)(ii), (iii). Section 51.308(f)(6)(v) further requires that all states' SIPs provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area; the inventory must include emissions for the most recent year for which data are available and estimates of future projected emissions. States must also include commitments to update their inventories periodically. The inventories themselves do not need to be included as elements in the SIP and are not subject to EPA review as part of the Agency's evaluation of a SIP revision.²⁸ All states' SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility. 40 CFR 51.308(f)(6)(vi). Per the 2019 Guidance, a state may note in its regional haze SIP that its compliance

with the Air Emissions Reporting Rule in 40 CFR part 51 subpart A satisfies the requirement to provide for an emissions inventory for the most recent year for which data are available. To satisfy the requirement to provide estimates of future projected emissions, a state may explain in its SIP how projected emissions were developed for use in establishing RPGs for its own and nearby Class I areas.²⁹

Separate from the requirements related to monitoring for regional haze purposes under 40 CFR 51.308(f)(6), the RHR also contains a requirement at 40 CFR 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I areas from a single source or a small group of sources. This is called "reasonably attributable visibility impairment."³⁰ Under this provision, if EPA or the FLM of an affected Class I area has advised a state that additional monitoring is needed to assess RAVI, the state must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment.

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a state's regional haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and EPA about a state's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement. See 81 FR 26942 at 26950 (May 4, 2016), (82 FR 3078 at 3119, January 10, 2017). To this end, every state's SIP revision for the second implementation period is required to describe the status of implementation of all measures included in the state's long-term strategy, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

A core component of the progress report requirements is an assessment of changes in visibility conditions on the

clearest and most impaired days. For second implementation period progress reports, 40 CFR 51.308(g)(3) requires states with Class I areas within their borders to first determine current visibility conditions for each area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions to assess progress made to date. See 40 CFR 51.308(g)(3)(ii). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first implementation period progress reports. See 40 CFR 51.308(f)(5) and (g)(3)(iii). Since different states submitted their first implementation period progress reports at different times, the starting point for this assessment will vary state by state.

Similarly, states must provide analyses tracking the change in emissions of pollutants contributing to visibility impairment from all sources and activities within the state over the period since they submitted their first implementation period progress reports. See 40 CFR 51.308(f)(5) and (g)(4). Changes in emissions should be identified by the type of source or activity. Section 51.308(g)(5) also addresses changes in emissions since the period addressed by the previous progress report and requires states' SIP revisions to include an assessment of any significant changes in anthropogenic emissions within or outside the state. This assessment must explain whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the state projected based on its long-term strategy for the first implementation period.

G. Requirements for State and Federal Land Manager Coordination

CAA section 169A(d) requires that before a state holds a public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the state must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that states "provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the

²⁹ *Id.*

³⁰ EPA's visibility protection regulations define "reasonably attributable visibility impairment" as "visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources." 40 CFR 51.301.

²⁸ See "Step 8: Additional requirements for regional haze SIPs" in 2019 Guidance at 55.

State's decisions on the long-term strategy." 40 CFR 51.308(i)(2). Consultation that occurs 120 days prior to any public hearing or public comment opportunity will be deemed "early enough," but the RHR provides that in any event the opportunity for consultation must be provided at least 60 days before a public hearing or comment opportunity. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I area and their recommendations on the development and implementation of strategies to address such impairment. 40 CFR 51.308(i)(2). For EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to EPA must also describe how the state addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

IV. EPA's Evaluation of Minnesota's Regional Haze Submission for the Second Implementation Period

A. Background on Minnesota's First Implementation Period SIP Submission

Minnesota submitted its Regional Haze SIP for the first implementation period to EPA on December 30, 2009, and supplemented it on January 5, 2012, and May 8, 2012. EPA approved Minnesota's first implementation period Regional Haze SIP submission as satisfying the applicable requirements in 40 CFR 51.308, except for BART emission limits for the taconite facilities, on June 12, 2012 (77 FR 34801), effective July 12, 2012. These requirements include identifying affected Class I areas, calculating the baseline and natural visibility, establishing RPGs, mandating BART emission reductions for the five electric generating units (EGUs) that were subject to BART (in this case through participation in the Cross-State Air Pollution Rule (CSAPR)), adopting a long-term strategy for making reasonable progress toward visibility goals, providing a monitoring strategy, and consulting with other states and the FLMs before adopting its regional haze

plan. EPA acted on RAVI BART for Northern States Power Company's Sherburne County Generating Station (Sherco) in a separate action (81 FR 11668, March 7, 2016), but approved the Minnesota provided emission limitations for Sherco units 1 and 2 solely as a SIP strengthening measure. The requirements for regional haze SIPs for the first implementation period are contained in 40 CFR 51.308(d) and (e).

EPA promulgated a FIP addressing the BART requirement for taconite plants in Michigan and Minnesota. This FIP was published in the **Federal Register** on February 6, 2013 (78 FR 8705). EPA revised the taconite plant FIP on April 12, 2016 (81 FR 21671) and on April 1, 2021 (86 FR 12095). Most recently, EPA published two notices of proposed settlement agreements on April 23, 2024, setting forth final NO_x BART emission limits for Tilden Mining Company (in Michigan), Hibbing Taconite Company, United Taconite, Minorca Mine, and Keetac, and final SO₂ BART emission limits for Tilden, Minorca, and Northshore Mining Company. Final adoption of these limits would complete the limit-setting process required by the taconite plant FIP. 89 FR 30357 and 30360, April 23, 2024. EPA also issued a FIP addressing RAVI for Sherco, a Minnesota source, on March 7, 2016 (81 FR 11668).

Pursuant to 40 CFR 51.308(g), Minnesota was also responsible for submitting a five-year progress report as a SIP revision for the first implementation period, which it did on December 30, 2014. EPA approved the progress report and incorporated it into the Minnesota SIP on June 28, 2018 (83 FR 30350), effective July 30, 2018.

B. Minnesota's Second Implementation Period SIP Submission and EPA's Evaluation

In accordance with CAA section 169A and the RHR at 40 CFR 51.308(f), on December 20, 2022, Minnesota submitted a revision to the Minnesota SIP to address its regional haze obligations for the second implementation period that runs from 2018 to 2028. Minnesota made its second period Regional Haze SIP submission available for public comment on August 22, 2022. The public comment period lasted until October 7, 2022. Minnesota held a public hearing on September 22, 2022. Minnesota received and responded to public comments. It included the comments and its responses in appendix H of its regional haze SIP submission.

The following sections describe Minnesota's SIP submission, including

analyses conducted by LADCO and Minnesota's determinations based on those analyses, Minnesota's assessment of progress made since the first implementation period in reducing emissions of visibility impairing pollutants, and the visibility improvement progress at its Class I areas and nearby Class I areas. This proposed rulemaking also contains EPA's evaluation of Minnesota's submission against the requirements of the CAA and RHR for the second implementation period of the regional haze program.

C. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each state in which any Class I area is located or "the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility" in a Class I area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each state's plan "must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State," and paragraph (f)(2), which requires each state's plan to include a long-term strategy that addresses regional haze in such Class I areas.

EPA explained in the 1999 RHR preamble that the CAA section 169A(b)(2) requirement that states submit SIPs to address visibility impairment establishes "an 'extremely low triggering threshold' in determining which States should submit SIPs for regional haze." 64 FR 35714 at 35721, July 1, 1999. In concluding that each of the contiguous 48 states and the District of Columbia meet this threshold,³¹ EPA relied on "a large body of evidence demonstrat[ing] that long-range transport of fine PM contributes to regional haze," *id.*, including modeling studies that "preliminarily demonstrated that each State not having a Class I area had emissions contributing to impairment in at least one downwind Class I area." 64 FR 35714 at 35722, July 1, 1999. In addition to the technical evidence supporting a conclusion that each state contributes to

³¹ EPA determined that "there is more than sufficient evidence to support our conclusion that emissions from each of the 48 contiguous states and the District of Columbia may reasonably be anticipated to cause or contribute to visibility impairment in a Class I area." 64 FR 35714 at 35721, July 1, 1999. Hawaii, Alaska, and the U.S. Virgin Islands must also submit regional haze SIPs because they contain Class I areas.

existing visibility impairment, EPA also explained that the second half of the national visibility goal—preventing future visibility impairment—requires having a framework in place to address future growth in visibility-impairing emissions and makes it inappropriate to “establish criteria for excluding States or geographic areas from consideration as potential contributors to regional haze visibility impairment.” 64 FR 35714 at 35721, July 1, 1999. Thus, EPA concluded that the agency’s “statutory authority and the scientific evidence are sufficient to require all States to develop regional haze SIPs to ensure the prevention of any future impairment of visibility, and to conduct further analyses to determine whether additional control measures are needed to ensure reasonable progress in remedying existing impairment in downwind Class I areas.” 64 FR 35714 at 35722, July 1, 1999. EPA’s 2017 revisions to the RHR did not disturb this conclusion. See 82 FR 3078 at 3094 January 10, 2017.

Minnesota is home to two mandatory Class I Federal areas: Boundary Waters Canoe Area Wilderness (Boundary Waters) and Voyageurs National Park (Voyageurs). For the second implementation period, Minnesota performed technical analyses to help assess source and state-level contributions to visibility impairment at in and out of state Class I areas. Those results are presented in section 2.2.2 of its plan. Minnesota also assessed the contributions from other states and regions to its two Class I areas. See section 2.2.3 of the Minnesota plan.

Based on modeling completed by the state, Minnesota was found to have the greatest visibility impact on the Class I areas within the state, Boundary Waters and Voyageurs, contributing an estimated 16.2 and 17.6 percent of sulfate plus nitrate visibility impairment, respectively. Minnesota emissions also impact out-of-state Class I areas in Michigan, although the impacts to these out-of-state areas are smaller at 8.2 percent (Isle Royale) and 4.3 percent (Seney). Visibility impacts to the next closest six Class I areas in other states ranged from 0.5 percent at Lostwood Wilderness in North Dakota to 2.6 percent at Mammoth Cave in Kentucky.

Minnesota also assessed the states and regions impacting Minnesota’s Class I areas. It presented the results of its source apportionment modeling in section 2.2.3, including Table 13, of its plan. Minnesota identified itself, Canada, North Dakota, Iowa, Nebraska, Wisconsin, and Missouri as the largest

contributors to visibility impairment in one or both Class I areas in Minnesota.

D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

The regulation at 40 CFR 51.308(f)(1) requires states to determine the following for “each mandatory Class I Federal area located within the State”: baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for states to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. 40 CFR 51.308(f)(1)(vi)(B).

Voyageurs has a complete set of ambient IMPROVE data for 2000 to 2004 baseline visibility conditions. Boundary Waters also has a complete, but substitute, ambient dataset for this period because an equipment malfunction in 2002, 2003, and 2004 caused the loss of some PM_{2.5} particle mass data, elemental organic carbon mass data, and coarse particulate (PM₁₀) mass data. The data loss invalidated three out of every seven samples for these components. To use the valid data, Minnesota substituted missing elements with data from Voyageurs. This data substitution is detailed in Minnesota’s plan, appendix A. Minnesota included this data substitution in its first period Regional Haze plan, which EPA approved, effective July 12, 2012. 77 FR 34801, June 12, 2012.

As noted in section 2.1 of Minnesota’s plan, for Boundary Waters, baseline visibility conditions are 6.5 dv on the 20 percent clearest days and 18.5 dv on the 20 percent most impaired days. For Voyageurs, the baseline visibility conditions are 7.2 dv on the 20 percent clearest days and 17.9 dv on the 20 percent most impaired days.

As noted in section 2.1 of Minnesota’s plan, Minnesota calculated natural conditions for Boundary Waters at 6.5 dv on the 20 percent clearest days and 9.1 dv on the 20 percent most impaired days. For Voyageurs, Minnesota calculated the natural conditions at 7.2

dv³² on the 20 percent clearest days and 9.3 dv on the 20 percent most impaired days.

Current conditions, based on 2015–2019 monitoring data, for the days of most impaired visibility, are better than the 2018 interim progress goals for the Boundary Waters and Voyageurs, as depicted in Figure 4 in section 2.1 of Minnesota’s plan. Current conditions for the days of clearest visibility improved and did not degrade from the baseline. Minnesota provides the current visibility conditions for each year and a running five-year average for both Class I areas on Table 5 in section 2.1.3 of its plan. The 2015 to 2019 averages are: Boundary Waters at 4.2 dv on the clearest days and 13.4 dv on the most impaired days and Voyageurs at 5.1 dv on the clearest days and 13.5 dv on the most impaired days.

Minnesota shows the progress to date for both its Class I areas in section 2.1.4, Table 6 of its plan. Table 6 has data for the five-year averages from 2004 to 2019. For Boundary Waters, the five-year average for the most impaired days decreased from 18.5 in 2004 to 13.4 in 2019 while the five-year average for the clearest days trended from 6.5 dv in 2004 to 4.2 in 2019. For Voyageurs, the five-year average for the most impaired days decreased from 17.9 in 2004 to 13.5 in 2019 while the five-year average for the clearest days trended from 7.2 dv in 2004 to 5.1 in 2019. Based on the ambient data trends, steady progress towards natural conditions is being made in both Boundary Waters and Voyageurs.

Minnesota calculated the difference between current visibility and natural visibility conditions in section 2.1.5 of its plan. For Boundary Waters, on the most impaired days, the current visibility is 13.4 dv, which is 4.3 dv above the 2064 end point of 9.1 dv, while the current 4.2 dv visibility on the clearest days is below the end point target of 6.5 dv. The difference is similar at Voyageurs, with the current visibility on the most impaired days of 13.5 dv being 4.2 dv above the 9.3 dv end point in 2064. The current visibility at Voyageurs on the clearest days, 5.1 dv, is also below the 2064 end point target of 7.2 dv.

Minnesota, in section 2.1.6 of its plan, calculated the URP for the Class I areas

³² EPA estimated the natural visibility conditions on the 20 percent clearest days to be 3.48 dv at Boundary Waters and 4.27 dv at Voyageurs. See Technical Addendum including updated visibility data through 2018 for the memo titled “Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program” issued June 2020.

for each implementation period. The URP for 2018 is 16.3 dv at Boundary Waters and 15.9 dv at Voyageurs. The 2018 five-year average for the most impaired days is 13.8 dv at Boundary Waters and 14.0 dv at Voyageurs. The 2028 URP is 14.7 dv at Boundary Waters and 14.5 dv at Voyageurs. Thus, 2018 visibility is below the 2018 URP as well as the 2028 URP. The current visibility continues the decline in visibility impairment seen in 2018. The 2019 five-year average, the most current at submission, improved to 13.4 dv at Boundary Waters and to 13.5 dv at Voyageurs.

EPA proposes to find that Minnesota has submitted a regional haze plan that meets the requirements of 40 CFR 51.308(f)(1) related to the calculations of baseline, current, and natural visibility conditions; progress to date; and the URP for the second implementation period.

E. Long-Term Strategy for Regional Haze

1. Emission Measures Necessary To Make Reasonable Progress

Each state having a Class I area within its borders or emissions that may affect visibility in a Class I area must develop a long-term strategy for making reasonable progress towards the national visibility goal. CAA 169A(b)(2)(B). As explained in the Background section of this action, reasonable progress is achieved when all states contributing to visibility impairment in a Class I area are implementing the measures determined—through application of the four statutory factors to sources of visibility impairing pollutants—to be necessary to make reasonable progress. 40 CFR 51.308(f)(2)(i). Each state's long-term strategy must include the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2). All new (*i.e.*, additional) measures that are the outcome of four-factor analyses are necessary to make reasonable progress and must be in the long-term strategy. If the outcome of a four-factor analysis and other measures necessary to make reasonable progress is that no new measures are reasonable for a source, that source's existing measures are necessary to make reasonable progress, unless the state can demonstrate that the source will continue to implement those measures and will not increase its emission rate. Existing measures that are necessary to make reasonable progress must also be in the long-term strategy. In developing its long-term strategies, a state must also

consider the five additional factors in 40 CFR 51.308(f)(2)(iv). As part of its reasonable progress determinations, the state must describe the criteria used to determine which sources or group of sources were evaluated (*i.e.*, subjected to four-factor analysis) for the second implementation period and how the four factors were taken into consideration in selecting the emission reduction measures for inclusion in the long-term strategy. 40 CFR 51.308(f)(2)(iii).

The following paragraphs detail how Minnesota's submission addresses the requirements of 40 CFR 51.308(f)(2)(i). Minnesota evaluated and determined the emission reduction measures needed to make reasonable progress. In its submission, Minnesota documents the methodology it used in its selection of sources for analysis and control measures necessary to make reasonable progress, which are discussed later in this section.

States may rely on technical information developed by the RPOs of which they are members to select sources for four-factor analysis and to conduct that analysis, as well as to satisfy the documentation requirements under 40 CFR 51.308(f). States may also satisfy the requirement of 40 CFR 51.308(f)(2)(ii) to engage in interstate consultation with other states that have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area under the auspices of intra- and inter-RPO engagement.

Minnesota is a member of an RPO, LADCO, and participated in the RPO's regional approach to developing a strategy for making reasonable progress towards the national visibility goal in the northern Midwest Class I areas.

Minnesota performed its own technical analysis using EPA and LADCO provided elements. Minnesota's modeling used EPA's modeling platform with some portions replaced by those from LADCO.

The technical analyses included in Minnesota's submission are as follows:

- Establishment of RPGs for Boundary Waters and Voyageurs (appendix A)
- Contributions to the 2028 RPGs for Boundary Waters and Voyageurs (appendix A)
- Minnesota's impact on Class I areas (appendix A)
- Assessment of states and regions impacting Minnesota's Class I areas (appendix A)
- Modeling analyses supporting the conclusion that the Long-Term Strategy provides reasonable progress (appendix A)

- LADCO's Technical Support Documentation (appendix C)
- LADCO's Q/d Materials (appendix C)
- LADCO's photochemical modeling and Emissions Modeling results (appendix C)

Minnesota found that the emission reduction measures necessary to make reasonable progress include:

- Permanent and federally enforceable current and future retirements at ten EGUs (Minnesota plan Table 32), Enforceable by permit or administrative order;
 - Existing effective controls for nine other selected sources, two paper mills, one EGU, and six taconite facilities, which are required through permits and the 2013 regional haze taconite plant FIP (Minnesota plan Table 33);³³
 - Additional NO_x emission reductions from Hibbing Public Utilities Commission from its "Hibbing Public Utilities Restorative Plan." These three EGUs will use renewable resources such as wood alongside natural gas as the primary fuels for its boilers. Minnesota established enforceable requirements, via an administrative order, for the proposed NO_x emission limits. These NO_x emission reductions were accounted for in Minnesota's modeling analysis 2028 projection. See section 2.5.1 in the Minnesota plan;
 - Expected emission reductions from the implementation of the Regional Haze taconite plant FIP (Minnesota plan section 2.6.2);³⁴
 - Updated Northeast Minnesota Plan adding voluntary emission reduction targets of 30 percent below 2018 levels by 2025 and 40 percent below 2018 levels by 2028, targeting taconite facilities, EGUs, and paper mills (Minnesota plan section 2.5.7).

2. EPA's Evaluation of Minnesota's Compliance With 40 CFR 51.308(f)(2)(i)

The regulation at 40 CFR 51.308(f)(2)(i) requires states to evaluate and determine the emission reduction measures that are necessary to make reasonable progress by applying the four statutory factors to sources in a control analysis. The emission reduction measures that are necessary to make reasonable progress must be included in the long-term strategy. 40 CFR 51.308(f)(2).

EPA proposes to find that Minnesota appropriately considered the four statutory factors: cost of compliance, time necessary for compliance, the

³³ 78 FR 8706, February 6, 2013.

³⁴ See 89 FR 30357 and 30360, April 23, 2024 for details on the April 2024 proposed settlements prefacing proposed rules that will include emission limitations for taconite facilities in Minnesota and Michigan.

energy and non-air environmental impacts, and the remaining useful life of the source in its source evaluations.

Minnesota detailed its source selection process in section 2.3.6. of its plan. Minnesota originally selected 13 facilities that accounted for about the top 80 percent of emissions impacting visibility at Boundary Waters and Voyageurs. Discussions with the FLMs resulted in Minnesota considering four additional facilities—American Crystal Sugar in Crookston and East Grand Forks, Hibbing Public Utilities, and Southern Minnesota Beet Sugar Cooperative. Thus, Minnesota selected the following 17 facilities, which account for nearly the top 85 percent of visibility impacts at Boundary Waters and Voyageurs and result in an effective Q/d of about 4.6:³⁵

- American Crystal Sugar—Crookston: Boilers 1, 2, and 3;
- American Crystal Sugar—East Grand Forks: Boilers 1 and 2;
- Boise White Paper: Recovery Furnace, Boilers 1 and 2;
- Cleveland Cliffs Minorca Mine: Indurating Furnace;
- Hibbing Public Utilities: Boilers 1A, 2A, 3A, and Wood Fired Boiler;
- Hibbing Taconite Company: Indurating Furnace Lines 1, 2, and 3;
- Minnesota Power—Boswell: Units 1, 2, 3, and 4;
- Minnesota Power—Taconite Harbor: Boilers 1 and 2;
- Northshore Mining—Silver Bay: Power Boilers 1 and 2 and Furnaces 11 and 12;
- Sappi Cloquet LLC: Power Boiler 9 and Recovery Boiler 10;
- Southern Minnesota Beet Sugar Cooperative: Boiler 1;
- United Taconite—Fairlane Plant: Pellet Induration Lines 1 and 2;
- US Steel—Keetac: Grate Kiln;
- US Steel—Minntac: Rotary Kiln Lines 3, 4, 5, 6, and 7;
- Virginia Department of Public Utilities: Boilers 7, 9, and 11;
- Xcel Energy—Allen S. King: Boiler 1; and
- Xcel Energy—Sherburne: Units 1, 2, and 3.

Minnesota then contacted these selected sources and requested they prepare site-specific four-factor analyses. To guide facilities' assessment of selected sources, Minnesota suggested the facilities use the 2016 actual emissions data unless 2028 operations are expected to be significantly different than 2016

³⁵ Tables 43 and 44 of the Minnesota plan include more information on the Q/d, percentile, cumulative percentile, FLM interest, and whether Minnesota required a four-factor analysis.

operations. In its request, Minnesota explained that emissions should be based on representative historical operations and follow the recommendations regarding emissions data in EPA's August 2019 Guidance. Facilities generally provided emissions data that were reported to the most recent Minnesota annual emissions inventory (typically 2018 or 2019), which was at least as recent as the emissions data submitted to EPA's 2017 National Emissions Inventory (NEI), at the time the requested four-factor analyses were provided to Minnesota.

In appendix E of its plan, Minnesota reviewed the emissions data provided in each four-factor analysis and compared that information to the emissions data reported in Minnesota's annual emissions inventory for the years 2016 through 2020. Minnesota compared the emissions data to these years of reported emissions data to verify that the emissions used in the four-factor analyses were similar to historically reported emissions. Where emissions data used by facilities were not representative of typical emissions, Minnesota revised the emissions data used as part of evaluating potential control measures following the methods recommended by the EPA's Air Pollution Control Cost Manual³⁶ (as of June 23, 2022). As an example, the American Crystal Sugar—Crookston facility reports annual NO_x and SO₂ emissions based on a pound per hour value determined during stack testing while the four-factor analysis calculated emissions in pounds per million British thermal units. Minnesota and the facility both reviewed the stack testing results leading the state to conclude the calculated pound per hour values are skewed high, so it used the pounds per million British thermal units value for the four-factor analysis.

Minnesota also evaluated the cost of compliance as detailed in sections 2.4.3 and 2.5.1 of the Minnesota plan. In order to evaluate the reasonableness of potential control measures, Minnesota chose to evaluate those costs compared to available cost information from many sources including first period BART determinations, other states' regional haze plans,³⁷ EPA's RACT/BACT/LAER Clearinghouse,³⁸ and other sources.

³⁶ Available at <https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution>.

³⁷ The state plans from Arkansas, Arizona, Colorado, North Dakota, New Mexico, Oregon, Texas, Washington, and Wisconsin were available at the time, approximately October 2021, of Minnesota's review.

³⁸ RACT is Reasonably Available Control Technology, BACT is Best Available Control

Minnesota identified the units to be analyzed along with the request for facilities to prepare a four-factor analysis following the 2019 Guidance. The 2019 Guidance provides the methods to determine emission control measures to consider and details how the four factors of section 169A(g)(1) of the CAA (cost of compliance, time necessary for compliance, energy and non-air environmental impacts, and remaining useful life of the source) can be considered. Minnesota also let facilities refine the cost estimate with a source-specific vendor quote. In order to make the cost analyses uniform and more accurate, Minnesota further refined the analyses by adjusting the cost information using consistent factors in the calculations including interest rates and retrofit factors. Those analyses are detailed in appendix E, and in Tables 52 and 54 of section 2.4.3 and in section 2.5.1 of its plan.

Minnesota did not set a bright-line cost threshold but considered controls that cost less than approximately \$7,600 per ton as cost effective for the second implementation period. Minnesota used \$10,000 per ton for an initial screening threshold. Minnesota then evaluated potential NO_x and SO₂ control measures and refined the costs of those controls, factoring in interest rates, retrofit factors, and source-specific vendor quotes. After adjustments and further analysis, the most expensive control measure considered to be potentially cost-effective by the state was less than \$7,600 per ton.³⁹ Detail on the controls considered and costs calculated for each facility are provided in section 2.5.1 and in Tables 55 to 60 in Minnesota's plan.

In section 2.5.2 of the Minnesota plan, Minnesota reviewed the time needed for compliance with potential control measures provided by facilities to consider what compliance timeframe would be reasonable for each specific source. The state noted that in general, facilities provided an estimate of the time needed to install the evaluated control options including the time needed for design, engineering, procurement, and installation. Minnesota reviewed the facility's time needed for compliance with potential control measures provided by facilities to consider what compliance timeframe would be reasonable for each specific source. Minnesota considered the time

Technology, and LAER is Lowest Achievable Emission Rate; the Clearinghouse can be accessed at: <https://cfpub.epa.gov/RBLC/index.cfm?action=Home.Home&lang=en>.

³⁹ Original calculation for selective non-catalytic reduction on Sappi Cloquet Boiler 9 was \$7,632 per ton NO_x, which was later revised following a vendor quote and state revision.

necessary for compliance as part of evaluating potential control measures later in the four-factor analysis process in determining if a control measure was needed to make reasonable progress. EPA finds this approach reasonable given that it is consistent with the 2019 Guidance at 41.

In section 2.5.3 of the Minnesota plan, Minnesota stated that it considered the energy and non-air environmental impacts as part of the cost of compliance of potential control measures in determining whether a control measure was necessary to make reasonable progress. Minnesota considered this factor by evaluating the cost impact from the potential control measures such as whether adopting the control would: (1) increase or decrease energy use; (2) impact solid, liquid, and hazardous waste disposal; (3) create reagents that contaminate fly ash making it unsuitable for sale; and (4) require accessory systems such as additional fans. Minnesota considered the remaining useful life of each source as described in section 2.4.6 and 2.5.4 of its plan. Minnesota determined the remaining useful life by considering the remaining duration of operation and the expected lifespan of potential controls. Minnesota noted that facilities generally followed the Control Cost Manual control device recommendations in their calculations. In several cases, Minnesota considered enforceable retirement dates as the end of a source's useful life. Minnesota provided detail on the retirements of 10 units at Minnesota Power—Boswell, Minnesota Power—Taconite Harbor, Virginia Department of Public Utilities, and Xcel Energy—Allen S. King and Sherco facilities on Table 32 in section 2.3.3 of its plan.

In order to ensure that the long-term strategy contains the enforceable emissions limitations necessary for reasonable progress, Minnesota assessed emissions limitations at each of the 17 facilities it considered. For sources for which Minnesota determined that no additional control measures were needed, Minnesota relied on existing federally enforceable emissions limitations in the taconite plant FIP, and on retirement schedules at certain facilities memorialized in administrative orders as described in section 2.5.4 and appendix D of its plan and in the following paragraph. The Minnesota long-term strategy relies on these federally enforceable emissions limitations and retirement schedules as the measures necessary to make reasonable progress. As such, Minnesota concluded that additional control

measures were not necessary to make reasonable progress.

Minnesota entered into an administrative order regarding the Virginia Department of Public Utilities Boiler 7, including a permanent retirement scheduled for Boiler 7 by January 1, 2025. Minnesota also entered into administrative orders for the retirements of Minnesota Power—Taconite Harbor Boilers 1 and 2 by March 31, 2023, Xcel Energy—Allen S. King Boiler 1 by December 31, 2028, and Xcel Energy—Sherco Unit 3 by December 31, 2030. Minnesota also entered into an administrative order requiring the Northshore Mining—Silver Bay Power Company's Power Boiler 1 and Power Boiler 2 units to remain idled through 2031. Finally, at Hibbing Public Utilities commission, Minnesota entered into an administrative order requiring NO_x emission limits at Boilers 1A, 2A, and 3A effective January 1, 2023, that resulted in equivalent reductions that would have been achieved by installing controls on each boiler at the facility. EPA proposes to incorporate by reference these administrative orders.

Several units at selected facilities had permanently retired. In section 2.3.3 of its plan, Minnesota cites the federally enforceable permits for Minnesota Power—Boswell Energy Center Unit 1 and Unit 2, Virginia Department of Public Utilities Boiler 9, and Xcel Energy—Sherco Unit 1 and Unit 2.

Minnesota also considered the following sources to be effectively controlled through federally enforceable emissions limits included in operating permits or in the first regional haze implementation period. Regarding Boise White Paper Boiler 2 and Recovery Furnace, Minnesota determined that the facility's emissions permit included a NO_x limit comparable to recent BACT determinations for similar units. Regarding Minnesota Power's Boswell Energy Center Unit 3, BART NO_x limits were established in the first regional haze implementation period and the facility's emissions permit included BART SO₂ limits established pursuant to the 2012 Mercury Air Toxics Standards (MATS) rule for power plants. *See* 77 FR 9304, February 16, 2012. Regarding Minnesota Power's Boswell Energy Center Unit 4, Minnesota determined that the facility's emissions permit included a NO_x limit comparable to recent BACT determinations for similar units and a SO₂ limit established pursuant to the 2012 MATS rule. Regarding Sappi Cloquet Recovery Boiler 10, the facility's emissions permit included a NO_x BACT emissions limit.

Minnesota also considered the following sources to be effectively controlled through federally enforceable emissions limits in the taconite plant FIP. Regarding US Steel Minntac Rotary Kiln Lines 3, 4, 5, 6, and 7, EPA published a final rule on March 2, 2021, imposing a facility-wide BART NO_x emission limit for Minntac lines 3–7. 86 FR 12095, March 2, 2021. Regarding Minorca Mine Indurating Furnace, United Taconite Grate Kiln Lines 1 and 2, Hibbing Lines 1, 2, and 3, Northshore Mining—Silver Bay Furnace 11 and 12, and US Steel Keetac Grate Kiln, EPA published two notices of proposed settlement agreements on April 23, 2024. 89 FR 30357 and 30360, April 23, 2024. These actions set forth final NO_x BART emission limits for Hibbing, United Taconite, Minorca, and Keetac, and final SO₂ BART emission limits for Minorca and Northshore. Final adoption of these limits would complete the limit-setting process required by the taconite plant FIP.

In section 2.4.1 of its plan, Minnesota provided the emission control measures considered in Table 45 along with noting the units that have or will retire and were found to be effectively controlled. The NO_x controls generally considered were low NO_x burners (LNB) and/or over-fire air (OFA) systems, selective non-catalytic reduction (SNCR), and selective catalytic reduction (SCR). The SO₂ controls generally considered were wet flue gas desulfurization (FGD), dry FGD, and dry sorbent injection (DSI).

Minnesota evaluated potential NO_x and SO₂ controls for both American Crystal Sugar facilities. At American Crystal Sugar—Crookston, Minnesota considered controls for Boilers 1, 2, and 3. The NO_x controls were all over \$12,000 per ton (Minnesota refined) with the maximum 109 tons per year (TPY) for SCR on Boiler 3. The SO₂ controls were over \$12,500 per ton for DSI and over \$16,000 per ton for dry FGD for all three units. At American Crystal Sugar—East Grand Forks, Minnesota evaluated Boilers 1 and 2. Minnesota found that SNCR would cost about \$11,366 per ton NO_x to reduce 35 TPY on each unit, while DSI was calculated at \$11,241 per ton SO₂ to reduce 317 TPY on each unit. Minnesota concluded that neither NO_x nor SO₂ controls appear cost-effective for either American Crystal Sugar facility.

Minnesota also evaluated potential SO₂ controls for Hibbing Public Utilities Commission Boilers 1A, 2A, and 3A and evaluated NO_x controls on the Wood Fired Boiler unit. Minnesota determined

that none of these controls were cost effective.

For Sappi Cloquet LLC, Minnesota considered potential NO_x and SO₂ controls for Power Boiler #9. Minnesota calculated controlling 11 TPY of SO₂ emissions with DSI would cost \$515,275 per ton. Minnesota calculated SNCR on Power Boiler #9 would cost \$7,632 per ton of NO_x controlled. Sappi Cloquet supplied a vendor quote, on which Minnesota revised the expected control cost down to \$8,562 per ton. Minnesota concluded that neither NO_x nor SO₂ controls for Power Boiler #9 appear cost-effective for Sappi Cloquet in the second regional haze implementation period.

Minnesota also evaluated potential NO_x and SO₂ controls for Boiler 1 at Southern Minnesota Beet Sugar Cooperative. For SO₂, Minnesota calculated a Spray Dry Absorber control to cost \$10,097 per ton, which Minnesota found not to be cost effective. Minnesota also evaluated several potential NO_x controls for Boiler 1. Minnesota revised the facility's calculations for SNCR control to \$2,942 per ton that would reduce an expected 447 tons of NO_x. Although Minnesota found NO_x controls to be potentially cost effective, Southern Minnesota Beet Sugar Cooperative refuted Minnesota's determination to install NO_x controls ahead of the SIP submission deadline and provided a technical analysis supporting its position. As a result, Minnesota intends to reevaluate this facility for the 2025 progress report and the third regional haze implementation period.

Minnesota also evaluated potential NO_x controls for Boiler 1 at Boise White Paper. Minnesota refined the facility's four-factor analysis for potential control options and found that SCR is expected to reduce 66 TPY NO_x at \$13,783 per ton with the other option (LNB with OFA and flue gas recirculation) costing nearly twice that (\$26,649 per ton). Minnesota concluded that NO_x controls at Boise White Paper Boiler 1 are not cost effective.

Minnesota evaluated potential NO_x and SO₂ controls for Boiler 7 and potential NO_x controls for Boiler 11 at Virginia Department of Public Utilities. The facility suggested that Boiler 7 may retire during the second regional haze implementation period, but because the retirement was not confirmed, Minnesota analyzed that unit. For Boiler 7, Minnesota calculated a cost-effectiveness of \$9,534 per ton using SNCR to reduce 28 TPY NO_x. Minnesota calculated \$12,724 per ton for SCR on Boiler 11 reducing 81 TPY NO_x. Minnesota calculated \$25,420 per

ton SO₂ for a dry scrubber and \$42,939 per ton SO₂ for a wet scrubber on Boiler 7. On April 6, 2022, the facility informed Minnesota that it planned to retire Boiler 7 by January 1, 2025. Minnesota included an Administrative Order making the retirement of Boiler 7 at Virginia Department of Public Utilities permanent and enforceable that EPA is proposing to incorporate by reference. The calculated cost-effectiveness for potential NO_x control for Boiler 11 at Virginia Department of Public Utilities exceeds Minnesota's screening threshold.

EPA proposes to find that Minnesota has satisfied the requirements of 40 CFR 51.308(f)(2)(i) related to determining the emission reduction measures that are necessary to make reasonable progress by appropriately considering the four statutory factors and providing a long-term strategy that includes the enforceable emission limitations and compliance schedules that are necessary to make reasonable progress.

3. Additional Long-Term Strategy Requirements Consultation

The consultation requirements of 40 CFR 51.308(f)(2)(ii) provide that states must consult with other states that are reasonably anticipated to contribute to visibility impairment in a Class I area to develop coordinated emission management strategies containing the emission reductions measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require states to consider the emission reduction measures identified by other states as necessary for reasonable progress and to include agreed-upon measures in their SIPs, respectively. Under 40 CFR 51.308(f)(2)(ii)(C) speaks to what happens if states cannot agree on what measures are necessary to make reasonable progress.

As noted in section 2.9.1 of its plan, Minnesota participated in the LADCO Regional Haze Technical Workgroup meetings beginning in January 2018. These meetings are ongoing.

Minnesota also consulted with several states individually. Minnesota met with Iowa on June 30, 2022. Minnesota met with Michigan on June 24, 2022. Minnesota consulted with Missouri on June 21, 2022. Nebraska met with Minnesota three times on June 26, 2020, December 16, 2020, and June 21, 2022. On June 25, 2020, Minnesota and North Carolina met. North Dakota and Minnesota consulted on March 22, 2021, and June 23, 2022. Minnesota met South Dakota on September 15, 2021. Minnesota and Wisconsin met on June

30, 2022. More information on these meetings with individual states and any follow-up is provided in Minnesota's plan at section 2.9.1.

No states notified Minnesota that they identified emissions from Minnesota sources as contributing to visibility impairment at their Class I areas. There are no requests from other states to analyze emissions controls at Minnesota sources or for Minnesota to undertake specific emissions reductions necessary to make reasonable progress for the second regional haze implementation period at out-of-state Class I areas.

EPA proposes to find that Minnesota has met the 40 CFR 51.308(f)(2)(ii)(A) and (B) consultation requirements with its participation in the LADCO Regional Haze Technical Workgroup consultation process plus its individual consultation meetings with contributing states. There were no disagreements with other states, so 40 CFR 51.308(f)(2)(ii)(C) does not apply.

Technical Basis

The regulation at 40 CFR 51.308(f)(2)(iii) requires states to document the technical basis of the long-term strategy. This includes the modeling, monitoring, cost, engineering, and emissions information that the state relied on in determining the emission-reduction measures that are necessary to make reasonable progress. As explored in further detail above, Minnesota specified the control measures necessary to make reasonable progress in section 2.5 of its plan. In summary, Minnesota concluded that the following control measures are necessary for reasonable progress:

- The realized and upcoming emission unit retirements;⁴⁰
- The existing effective controls for non-taconite emission units;⁴¹
- Additional NO_x emission reductions expected for Hibbing Public Utilities Commission;
- The expected emission reductions from implementation of the taconite plant FIP;
- The new, voluntary emission reduction targets in the Northeast Minnesota Plan for 2025 and 2028.

To select these control measures, Minnesota relied on monitoring, as

⁴⁰ Retirements of Minnesota Power's Boswell Energy Center Units 1 and 2, Minnesota Power's Taconite Harbor Energy Center Boilers 1 and 2, the Virginia Department of Public Utilities Boilers 7 and 9, Xcel Energy's Allen S. King Boiler 1, and Sherco's Units 1, 2, and 3, and the idling of Northshore Mining's Silver Bay Power Boilers 1 and 2 through 2031.

⁴¹ Existing effective measures at Boise White Paper Boiler 2 and Recovery Furnace, Minnesota Power's Boswell Energy Center Units 3 and 4, and Sappi Cloquet Recovery Boiler 10.

required in 40 CFR 51.308(f)(2)(iii). Minnesota documented its long-term modeling in detail in section 2.6 of its plan and its technical support document. Minnesota elected to follow EPA modeling guidance to estimate future visibility in its Class I areas to establish the RPGs for Boundary Waters and Voyageurs. Minnesota used an EPA modeling platform with some portions replaced by LADCO. The modeling platform consists of meteorology, emissions, and other inputs needed to run an air quality model.

40 CFR 51.308(f)(2)(iii) also requires the documentation of cost analyses as part of the technical basis for the state's long-term strategy. As explained above, Minnesota satisfactorily complied with the requirement of 40 CFR 51.308(f)(2)(i) to consider cost as one of the four statutory factors to be considered when evaluating control options. EPA is proposing to find that Minnesota's documentation of its cost considerations satisfy its obligation under 40 CFR 51.308(f)(2)(iii).

As noted above, Minnesota considered engineering, one of the technical basis elements of 40 CFR 51.308(f)(2)(iii), in its selection of potential emission control systems and in evaluating the control analyses (such as evaluating reasonableness of the control efficiency and retrofit factor used).

40 CFR 51.308(f)(2)(iii) also requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the state has submitted triennial emissions data to EPA (or a more recent year), with a 12-month exemption period for newly submitted data. In section 2.3.2 of its plan, Minnesota used 2016 emissions inventory data to calculate Q/d in an effort to select industrial point sources for an analysis of emissions control measures. The LADCO Regional Haze Technical Workgroup selected the National Emissions Inventory Collaborative 2016 inventory for the Q/d analysis in March 2018 as the best available inventory at that time. LADCO compiled the Q/d analysis, which accounted for the combined emissions of SO₂, NO_x, NH₃, and PM_{2.5} and the distance to the nearest Class I areas.

In section 2.4.2, Minnesota's SIP submission also provided 2028 emission projections based on a modeling platform using the 2016 emissions inventory. Minnesota also considered Clean Air Markets Program Data emissions for EGUs for NO_x and SO₂ in assessing emission reductions from

regional haze SIP strategies. In addition, in developing four-factor analyses, facilities provided emissions data that was reported to the most recent Minnesota annual emission inventory (typically 2018 or 2019), which was at least as recent as the emissions data submitted to EPA's 2017 NEI. Minnesota reviewed the emissions data provided in each four-factor analysis and compared that information to the emissions data reported to Minnesota's annual emission inventory for the years 2016 through 2020. Minnesota compared the emissions data to these years of reported emissions data to verify that the emissions used in the four-factor analysis were reasonably grounded in historical reported emissions. Based on Minnesota's consideration and analysis of the emission data in its SIP submission and supplemental documentation, EPA proposes to find that Minnesota has satisfied the emissions information requirement in 40 CFR 51.308(f)(2)(iii).

Finally, Minnesota also adequately documented adjustments to the factors impacting the RPG, which involved adjustments to reflect changes at facilities occurring after the modeling platform was developed.

EPA proposes to find that Minnesota adequately documented its technical basis for calculating the 2028 RPGs for Boundary Waters and Voyageurs.

Five Additional Factors

EPA also proposes to find that Minnesota reasonably considered the five additional factors in 40 CFR 51.308(f)(2)(iv) in developing its long-term strategy. Minnesota considered these five factors in section 2.3.4 of its plan.

Pursuant to 40 CFR 51.308(f)(2)(iv)(A), Minnesota noted that it considered ongoing state and Federal emission control programs that contribute to emission reductions through 2028 in the modeling that was used to develop the long-term strategy. In addition, the Sherco facility has an existing emissions limit to address RAVI at Minnesota Class I areas. EPA promulgated a RAVI FIP for Sherco on March 7, 2016 (81 FR 11668), and the emission limitations are in 40 CFR 52.1236. Minnesota also provided details on the taconite plant BART FIP that limits visibility impairing emissions from several taconite facilities. Minnesota noted numerous Federal standards and other existing measures that result in emission reductions. In section 3.1 of its plan, Minnesota also noted additional emission reductions from a variety of programs that are not reflected in its

2028 modeling inventory. Those programs include the Ozone and PM Advance programs, Volkswagen Settlement funded projects, and the Clean Cars Minnesota rule.

Pursuant to 40 CFR 51.308(f)(2)(iv)(B), Minnesota considered measures to mitigate the impacts of construction activities by considering EPA standards for nonroad and diesel mobile sources, as well as Minnesota Rule 7011.0150, which requires all reasonable measures to be undertaken to prevent particulate matter from becoming airborne. Minnesota notes the main impacts of construction activities include the impacts of emissions from nonroad mobile and diesel engines and fugitive emissions resulting from land clearing and construction.

Pursuant to 40 CFR 51.308(f)(2)(iv)(C), Minnesota considered source retirement and replacement schedules memorialized in enforceable administrative orders, as discussed above regarding Minnesota's compliance with the requirement of 40 CFR 51.308(f)(2)(i) to consider the remaining useful life of any existing source possibly subject to control requirements. See section 2.3.3 and Table 32 of Minnesota's plan. The source retirements that had already occurred are federally enforceable by permit condition as given by the state.

Pursuant to 40 CFR 51.308(f)(2)(iv)(D), Minnesota considered smoke management by considering the Minnesota Smoke Management Plan. The state noted that prescribed fire and managed wildfire have been used in Minnesota for many years to improve and maintain natural resources. The Minnesota Smoke Management Plan⁴² was created and implemented for three reasons: improving visibility in the Class I areas in Minnesota, enabling the continued use of prescribed fire as a management tool, and using a smoke management program to prevent violations of the particulate matter and ozone NAAQS due to emissions from managed wildland fires. Further, Minnesota highlighted the data from the IMPROVE monitoring sites at the Boundary Waters and Voyageurs Class I areas indicating that elemental and organic carbon, pollutants typically formed from fire, are not large

⁴² Agricultural burning is not covered by Minnesota's Smoke Management Plan. However, Minnesota stated that agricultural burning requires an open burning permit. In general, agricultural burning in Minnesota is limited to grass and stubble burning, particularly of bluegrass and timothy grass. This light fuel type produces short-term smoke events without a lot of combustion of biomass and smoldering. In addition, most agricultural burning occurs in the northwest area of the state, away from the Class I areas.

contributors to visibility impairment in these areas.

Pursuant to 40 CFR 51.308(f)(2)(iv)(E), Minnesota considered the anticipated net effect on visibility due to projected changes in emissions in its submission, in developing the technical information used to support development of the regional haze SIP. Minnesota noted that it used conservative estimates of the visibility improvements due to Minnesota's long-term strategy for the second regional haze implementation period. Minnesota met this requirement by projecting emissions from all sources in Minnesota and other nearby states to the end of the planning period (2028) and performing a detailed modeling analysis of the anticipated impact of those emissions changes on visibility impairment at Class I areas in both Minnesota and nearby states. However, Minnesota did not directly rely on the 2028 modeling analysis to select sources and evaluate controls in developing its long-term strategy. Instead, Minnesota used the Q/d process presented in section 2.3 of its plan to select sources for an analysis of control measures. As detailed in section IV. E.2. of this preamble, Minnesota performed a well-developed analysis resulting in a reasonable selection of sources and performed a sufficient control analysis on the selected sources.

EPA proposes to find that Minnesota's reasonable consideration of each of the five additional factors satisfies the requirements of 40 CFR 51.308(f)(2)(iv).

F. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I area. Minnesota contains two Class I areas, making it subject to 40 CFR 51.308(f)(3)(i). Section 51.308(f)(3)(i) requires a state in which a Class I area is located to establish RPGs—one each for the most impaired and clearest days—reflecting the visibility conditions that will be achieved at the end of the implementation period as a result of the emission limitations, compliance schedules and other measures required under paragraph (f)(2) to be in states' long-term strategies, as well as implementation of other CAA requirements. The long-term strategies as reflected by the RPGs must provide for an improvement in visibility on the most impaired days relative to the baseline period and ensure no degradation on the clearest days relative to the baseline period. Section 51.308(f)(3)(ii)(B) requires that if a state contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in *another*

state, and the RPG for the most impaired days in that Class I area is above the URP, the upwind state must provide the same demonstration.

Minnesota determined the 2028 RPGs for Boundary Waters and Voyageurs based on the long-term strategy and other enforceable measures described in its plan.

Minnesota determined the RPGs using its modeling platform, consisting of EPA's 2016 modeling platform, version 1, with some parts replaced with those provided by LADCO. This resulted in a 2016 modeling platform, version 1b, as detailed in the Minnesota plan at section 2.6.1. Minnesota used the National Emissions Inventory Collaborative's emissions inventory 2016 base year for the second implementation period. Minnesota details the meteorology inputs for its emissions model and its air-quality model in its plan. For the base year inventories, Minnesota used the LADCO prepared "actual" and "typical" emissions inventories. Minnesota used the actual emissions inventory for evaluating air-quality model performance. Minnesota used the typical emissions inventory for establishing RPGs and for the contribution assessment. Minnesota notes the only difference between the actual and typical emissions inventories involves the characterization of emissions from the taconite facilities in Minnesota. LADCO prepared a 2028 projected "typical" emissions inventory for Minnesota by incorporating state-provided emissions projections for taconite facilities that apply FIP limits from the first implementation period. LADCO's 2028 future year inventory used the National Emissions Inventory Collaborative's 2016 emissions inventory with updates.

According to the modeling, the 2028 RPGs for the most impaired days are 13.4 dv for Boundary Waters and 13.6 dv for Voyageurs. The 2028 RPGs for the clearest days are 4.5 dv for Boundary Waters and 5.3 dv for Voyageurs. See Table 65 of the Minnesota plan. Minnesota's long-term strategy and the RPGs provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period, in accordance with 40 CFR 51.308(f)(3)(i).

Section 51.308(f)(3)(i) also specifies that RPGs must reflect "enforceable emissions limitations, compliance schedules, and other measures *required under paragraph (f)(2) of this section*" (emphasis added). EPA interprets this provision as requiring that only emission reduction measures that

states—including upwind states—have determined to be necessary for reasonable progress and incorporated into their long-term strategies be reflected in a Class I area's RPGs. This ensures that RPGs include only those measures that are reasonably certain to be implemented. Minnesota detailed these measures in section 2.6.2 of its plan. Minnesota used the known measures at the time when it developed the 2016 model platform. The measures reflected in the modeling for the RPGs for Boundary Waters and Voyageurs are summarized on Table 66 of the Minnesota plan. Emission changes that were not included in the RPG modeling are also noted on Table 66. In determining the RPGs, Minnesota also included the unit retirements at Minnesota Power's Boswell Energy Center Units 1 and 2, Minnesota Power's Taconite Harbor Energy Center, the Virginia Department of Public Utilities, Xcel Energy's Allen S. King, and Sherco's Units 1 and 2. Additionally, Minnesota factored in projected additional use of units to offset the generation capacity from the retiring units. Minnesota reflected additional use of Sherco's Unit 3, Minnesota Power's Boswell Energy Center Units 3 and 4, and Hibbing Public Utilities Units 1A, 2A, and 3A in the RPGs. Minnesota did not know about emission reductions required at Cleveland Cliffs Minorca facility and at Hibbing Taconite at the time modeling was being conducted. As a result, this is not reflected in the RPGs. Minnesota provides the long-term strategy measures reflected in the RPGs for Boundary Waters and Voyageurs in Table 66 of its plan.

The RHR at 40 CFR 51.308(f)(3)(iii) notes that the RPGs are not directly enforceable but will be considered by the Administrator in evaluating the adequacy of the measures in the implementation plan in providing for reasonable progress towards achieving natural visibility conditions at that area.

Under 40 CFR 51.308(f)(3)(ii)(A), a state with a Class I area that establishes an RPG for the most impaired days that provides for a slower rate of improvement in visibility than the URP must calculate the number of years required to reach natural conditions. Because Minnesota's RPGs are below the URP, the demonstration requirement under 40 CFR 51.308(f)(3)(ii)(A) is not triggered.

Under 40 CFR 51.308(f)(3)(ii)(B), if a state contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in another state for which a demonstration by the other state is required, then the

state must demonstrate that there are no additional emission reduction measures that would be reasonable to include in its long-term strategy. The out-of-state Class I areas with the largest visibility contributions from Minnesota (primarily the Michigan Class I areas) are well below the URP. Thus, EPA proposes to conclude that the demonstration requirement under 40 CFR 51.308(f)(3)(ii)(B) is not triggered.

In sum, EPA proposes to determine that Minnesota has satisfied the applicable requirements of 40 CFR 51.308(f)(3) relating to RPGs.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a state's regional haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this subsection is for states with Class I areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Compliance with this requirement may be met through participation in the IMPROVE network.

Minnesota uses its participation in the IMPROVE program⁴³ to meet the 40 CFR 51.308(f)(6) monitoring strategy requirements. Minnesota determined that no modifications to its strategy are necessary at this time. See 2.8.4 of the Minnesota plan.

Section 51.308(f)(6)(i) requires SIPs to provide for the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all mandatory Class I Federal areas within the state are being achieved. The IMPROVE monitoring sites are in the two Class I areas, at Boundary Waters (monitor BOWA1) and Voyageurs (monitor VOYA2). Additionally, an IMPROVE Protocol site is located in southeastern Minnesota near Great River Bluffs State Park (monitor GRR1). See 2.8.4 and Figure 16 of the Minnesota plan.

Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the state to regional haze visibility impairment at mandatory Class I Federal areas both

within and outside the state. Minnesota used its own modeling analysis to conduct the contribution assessment as detailed in section 2.2.1 and appendix A of its plan.

In 40 CFR 51.308(f)(6)(iii) only applies to states without a Class I area, requiring procedures for using monitoring data in determining the contribution of emissions to visibility impairment at Class I areas in other states. Minnesota has Class I areas, therefore this requirement is inapplicable.

Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state. The monitoring strategy for Minnesota relies upon the continued availability of the IMPROVE network. Minnesota supports the continued operation of the IMPROVE network through both state and Federal funding mechanisms.

Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available and estimates of future projected emissions. It also requires a commitment to update the inventory periodically. The Minnesota emissions inventory includes VOC, NO_x, PM_{2.5}, PM₁₀, NH₃, and SO₂. Minnesota rules require point sources to submit reports of their emissions to the state each year and an annual point source emissions inventory is produced (Minn. R. 7019.3000). Minnesota compiles a full statewide emissions inventory every three years and submits this data to the NEI. See 2.8.5 of the Minnesota plan.

In 40 CFR 51.308(f)(6)(v) also requires states to include estimates of future projected emissions and include a commitment to update the inventory periodically. Minnesota noted its intention to continue to update the full emissions inventory on the three-year NEI cycle. See 2.8.5 of the Minnesota plan.

In 40 CFR 51.308(f)(6)(vi) requires a state to consider other elements necessary to assess and report on visibility, including reporting and recordkeeping. Minnesota has met the other applicable requirements of 40 CFR 51.308(f)(6), therefore no further elements are necessary for Minnesota to assess and report on visibility pursuant to 40 CFR 51.308(f)(6)(vi).

EPA proposes to find that Minnesota has met the requirements of 40 CFR 51.308(f)(6) through its continued participation in the IMPROVE network,

its contribution analysis, its emissions reporting to EPA, and its statewide emissions inventory.

H. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires that periodic comprehensive revisions of states' regional haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable RPGs for each Class I area within the state and each Class I area outside the state that may be affected by emissions from within that state. In 40 CFR 51.308(g)(1) and (2) apply to all states and require a description of the status of implementation of all measures included in a state's first implementation period regional haze plan and a summary of the emission reductions achieved through implementation of those measures. The regulations in 40 CFR 51.308(g)(3) applies only to states with Class I areas within their borders and requires such states to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. The regulations in 40 CFR 51.308(g)(4) applies to all states and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, 40 CFR 51.308(g)(5), which also applies to all states, requires an assessment of whether any significant changes in anthropogenic emissions within or outside the state have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

Minnesota submitted its previous progress report on December 30, 2014. EPA Guidance suggests covering the period approximately from the first full year that was not in the previous progress report through a year that is as close as possible to the submission date of the SIP revision. Thus, Minnesota's

⁴³ The IMPROVE sites also provide PM_{2.5} speciation data. Therefore, these sites are a key component of EPA's national fine particle monitoring in addition to being critical to tracking progress related to regional haze regulations.

progress report covers the period of 2015 to 2021.

Minnesota's plan in section 2.10.1 describes the status of emission reduction measures from the first implementation period as required by 40 CFR 51.308(g)(1). Minnesota worked on implementing BART controls although Minnesota taconite facilities subject to the taconite plant FIP have not fully implemented BART controls pending settlement agreements. Minnesota also implemented its Northeast Minnesota Plan as part of its long-term strategy in the first period. This plan established voluntary combined NO_x and SO₂ emission reduction targets for 2012 and 2018, which have been met.

As noted in section 2.10.2 of its plan, Minnesota met the emission reduction measures during the first implementation period, by 2014. Minnesota notes that emissions continued to fall in the second half of the first period, largely driven by emission reductions from EGUs. Minnesota cited EPA data⁴⁴ on EGU sector emissions. The EGU SO₂ emissions declined from 24,366 tons in 2013 to 6,068 tons in 2021. Similarly, EGU NO_x emissions went from 24,855 tons in 2013 to 11,392 tons in 2021.

EPA proposes to find that Minnesota has met the requirements of 40 CFR 51.308(g)(1) and (2) because its submission gives the status of implementation of first period emission reduction measures and a summary of the emission reductions achieved through such implementation.

States are required by 40 CFR 51.308(g)(3) to assess the visibility progress of its Class I areas. Section 2.10.3 of Minnesota's SIP submission included summaries of the visibility conditions and the trend of the five-year averages through 2019 at the class I areas. For Boundary Waters, the 2019 five-year average visibility impairment is 13.4 dv, down from 15.4 dv in 2014 on the most impaired days. Visibility conditions at Boundary Waters improved from 4.9 dv in 2014 to 4.2 dv in 2019 on the clearest days. At Voyageurs, visibility improved from 16.2 dv in 2014 to 13.5 dv in 2019 on the most impaired days. On the clearest days at Voyageurs, the visibility improved from 5.8 dv to 5.1 dv between 2014 and 2019. EPA proposes to find that Minnesota has satisfied the requirements of 40 CFR 51.308(g)(3).

Pursuant to 40 CFR 51.308(g)(4), Minnesota provided a summary of 2014 to 2021 NH₃, NO_x, PM₁₀, PM_{2.5}, SO₂,

and VOC emissions from all sources and activities, including from point, nonpoint, non-road mobile, and on-road mobile sources. This data is presented by sector in Tables 68 to 82 in its plan at section 2.10.4.

EPA proposes to find that Minnesota has satisfied the requirements of 40 CFR 51.308(g)(4) by providing emissions information for NH₃, NO_x, PM₁₀, PM_{2.5}, SO₂, and VOC emissions by source type.

As for the requirement of 40 CFR 51.308(g)(5) to give an assessment of changes impeding visibility progress, Minnesota evaluated contributions within and outside the state. Minnesota noted in section 2.10.5 of its plan that it has continued to make significant progress in reducing anthropogenic emissions within the state. On the other hand, one significant increase has been VOC contributions from North Dakota, primarily from the oil and gas sector. Minnesota states that this increase has not significantly impeded progress at Minnesota's Class I areas. Minnesota notes these contributions may need evaluation in future implementation periods. EPA proposes to find that Minnesota has met the requirements of 40 CFR 51.308(g)(5).

I. Requirements for State and Federal Land Manager Coordination

Section 169A(d) of the CAA requires states to consult with FLMs before holding the public hearing on a proposed regional haze SIP, and to include a summary of the FLMs' conclusions and recommendations in the notice to the public. In addition, 40 CFR 51.308(i)(2)'s FLM consultation provision requires a state to provide FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs can meaningfully inform the state's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough. Regardless, the opportunity for consultation must be provided at least 60 days before a public hearing or public comment period at the state level. In 40 CFR 51.308(i)(2) also provides two substantive topics on which FLMs must be provided an opportunity to discuss with states: assessment of visibility impairment in any Class I area and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires states, in developing their implementation plans,

to include a description of how they addressed FLMs' comments.

On May 11, 2022, Minnesota provided its draft Regional Haze plan to the USFS, FWS, and the NPS for a 60-day review and comment period pursuant to 40 CFR 51.308(i)(2). A FLM consultation meeting was held on June 30, 2022. NPS staff and USFS staff attended. NPS sent a comment letter on July 11, 2022. USFS sent a comment letter on July 12, 2022. Minnesota responded to the FLM comments and included the responses on Table 84 in its plan in accordance with 40 CFR 51.308(i)(3). EPA proposes to find that Minnesota has satisfied the requirements under 40 CFR 51.308(i) to consult with the FLMs on its Regional Haze SIP for the second implementation period.

Minnesota published the public notice for the proposed update to Minnesota's Regional Haze SIP in the State Register on August 22, 2022. The public comment period was from August 22, 2022, to October 7, 2022. During the public notice period, a copy of the SIP revision was made available at Minnesota's office in St. Paul and on its website. A hearing was held on September 22, 2022. Minnesota received five comment letters during the public comment period plus two late comment letters. The comment letters and Minnesota's responses are included in appendix H of its plan.

Further, Minnesota stated in section 3.2 of its plan that it performed specific outreach to Minnesota Tribes.⁴⁵ In these efforts, it contacted Minnesota Tribes to notify them throughout the planning process of opportunities to provide input. EPA's regional office routinely informs the Tribes within the Region of regional haze developments and notifies these Tribes about EPA proposed rulemaking. LADCO, Minnesota's RPO, includes these Tribes on its Regional Haze Technical Workgroup.

V. Environmental Justice Considerations

As explained in the *EPA Legal Tools to Advance Environmental Justice 2022* document, the CAA provides states with the discretion to consider environmental justice (EJ) in developing rules and measures related to the regional haze program. In this instance, Minnesota exercised this discretion. In reviewing Minnesota's analysis, EPA defers to Minnesota's reasonable exercise of its discretion in considering EJ. Minnesota notes that reductions in NO_x and SO₂ can have localized health benefits near facilities. The state further notes its actions required during the

⁴⁴ See U.S. EPA, *Power Sector Emissions Data, CLEAN AIR MARKET'S PROGRAM DATA*.

⁴⁵ See 2.9.3 in Minnesota's plan.

second implementation period are not expected to worsen air quality in any area of the state. It expects benefits will accrue to Class I areas as required by the program and to communities near subject facilities. Based on Minnesota's proposed strategies in the second implementation period, new controls or limits would benefit Minnesota-identified areas of concern for EJ. Minnesota identified the Virginia Department of Public Utilities, Hibbing Public Utilities Commission, and Minnesota Power's Taconite Harbor Energy Center as facilities impacting Minnesota-identified areas of concern for EJ. The state also selected Minnesota Power's Boswell Energy Center as near a Minnesota-identified areas of concern for EJ. A summary of the facilities Minnesota identified as impacting an area of environmental-justice concern is given in Table 83 of Minnesota's plan.

In sum, EPA is proposing approval of the SIP revision because it meets minimum requirements pursuant to the CAA and relevant implementing regulations. EPA also finds that Minnesota's consideration of EJ analyses in this context is reasonable. EPA encourages air agencies generally to evaluate EJ considerations of their actions and carefully consider impacts to communities. EPA considers Minnesota's EJ analysis but that is not the basis for EPA's decision making; Minnesota's SIP met the minimum applicable requirements, as explained above.

VI. Proposed Action

EPA is proposing to approve the Regional Haze SIP revision submitted by Minnesota on December 20, 2022, as satisfying the regional haze requirements for the second implementation period contained in 40 CFR 51.308(f).

VII. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Minnesota Administrative Orders for Hibbing Public Utilities Commission, effective August 19, 2022; Minnesota Power—Taconite Harbor Energy Center, effective May 27, 2021, and May 17, 2022; Northshore Mining Company, effective August 18, 2022; Virginia Department of Public Utilities, effective August 16, 2022; Xcel Energy—Allen S. King, effective July 16, 2021; and Xcel Energy—Sherburne Generating Plant, effective July 16, 2021, discussed in section IV.E.1. of this preamble. EPA

has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed rulemaking action, pertaining to Minnesota Regional Haze SIP submission for the second planning period, is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have

tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines EJ as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

Minnesota evaluated EJ considerations as part of its SIP submission even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. EPA's evaluation of Minnesota's EJ considerations is described above in the section titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. EPA is taking action under the CAA on bases independent of Minnesota's evaluation of EJ. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: July 1, 2024.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2024–14851 Filed 7–10–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 240508–0132]

RIN 0648–BM49

Endangered and Threatened Wildlife and Plants; Protective Regulations for the Oceanic Whitetip Shark (*Carcharhinus longimanus*); Extension of Public Comment Period

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

ACTION: Proposed rule; extension of public comment period and announcement of public hearing.

SUMMARY: We, NMFS, announce the extension of the public comment period on our May 14, 2024, proposed rule to issue protective regulations under section 4(d) of the Endangered Species Act (ESA) for the conservation of the threatened oceanic whitetip shark (*Carcharhinus longimanus*). As part of that proposed action, we solicited comment on the proposed rule, a draft environmental assessment (EA), and an initial regulatory flexibility analysis (IRFA) over a 60-day period, to end on July 15, 2024. Today, we extend the public comment period by 60 days to September 15, 2024, and announce that we will be holding one or more public hearings on the proposed rule.

Comments previously submitted do not need to be resubmitted, as they will be fully considered in the agency's proposed action.

DATES: The deadline for receipt of comments is extended from July 15, 2024, until September 15, 2024.

ADDRESSES: You may submit comments on this proposed rule, identified by NOAA–NMFS–2023–0117 by any one of the following methods:

- **Electronic Submissions:** Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2023–0117 in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail or hand-delivery:** Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

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 part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

The proposed rule and other supporting materials are available electronically at: <https://www.fisheries.noaa.gov/species/oceanic-whitetip-shark/conservation-management>.

FOR FURTHER INFORMATION CONTACT:

Adrienne Lohe, NMFS Office of Protected Resources, 301–427–8442; Adrienne.Lohe@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 2024, we published a proposed rule to issue protective regulations under section 4(d) of the ESA for the threatened oceanic whitetip shark (*Carcharhinus longimanus*) (89 FR 41917). In that notification, we also announced a 60-day public comment period and the availability of a draft EA and IRFA.

We received a request to extend the public comment period and hold public hearings for fishing communities in Hawaii, the Territories of American Samoa and Guam, and the Commonwealth of the Northern Mariana Islands in order to better understand the potential impact of the proposed rule and for communities to provide comments on the proposed rule. We considered the request and concluded that a 60-day extension should allow sufficient time for responders to submit comments without significantly delaying finalization of the proposed rule. We are therefore extending the close of the public comment period from July 15, 2024, to September 15, 2024. In addition to extending the public comment period, we are announcing that we will hold one or more public hearings on the proposed rule. Details on the date(s), time(s) and location(s) of the public hearing(s) will be announced in an upcoming **Federal Register** notice.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 5, 2024.

Samuel D. Rauch III,

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

[FR Doc. 2024–15177 Filed 7–10–24; 8:45 am]

BILLING CODE 3510–22–P

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 COMMERCE

Foreign-Trade Zones Board

[B-12-2024]

**Foreign-Trade Zone (FTZ) 49;
Authorization of Production Activity;
Merck Sharp & Dohme LLC;
(Pharmaceutical Products for
Research and Development); Rahway,
New Jersey**

On March 8, 2024, Merck Sharp & Dohme LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 49Y, in Rahway, New Jersey.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (89 FR 19295, March 18, 2024). On July 8, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: July 8, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024-15252 Filed 7-10-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

**Antidumping Duty Order on
Hydrofluorocarbon Blends From the
People's Republic of China: Final
Affirmative Determination of
Circumvention With Respect to R-
410B, R-407G, and a Certain Custom
Blend From the People's Republic of
China**

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of R-410B, R-407G, and a custom hydrofluorocarbon (HFC) blend of 50-percent R-125 and 50-percent R-134a (custom HFC blend) which are blended in the People's Republic of China (China) and further processed in the United States, are circumventing the antidumping duty (AD) order on HFC blends from China.

DATES: Applicable July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Benjamin Nathan, 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) 482-3834.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2016, Commerce published in the **Federal Register** the AD order on HFC blends from China.¹ On July 7, 2023, Commerce initiated a country-wide circumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(d)(1)(ii) to determine whether imports of R-410B, R-407G, and the custom HFC blend which are blended in China and further processed in the United States, are circumventing the *Order* and, accordingly, should be covered by the scope of the *Order*.² On April 11, 2024, Commerce published in the **Federal Register** its affirmative

¹ See *Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*Order*).

² See *Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty Order*, 88 FR 43275 (July 7, 2023) (*Initiation Notice*).

Preliminary Determination that imports of R-410B, R-407G, and the custom HFC blend which are blended in China using China-origin components and further processed in the United States are circumventing the *Order*.³

For a summary of events that occurred since the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for consideration in this final determination, see the Issues and Decision Memorandum.⁴ 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>.

Scope of the Order

The merchandise covered by the *Order* is certain HFC blends. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers imports of HFC blends R-410B, R-407G, and a certain custom HFC blend which are blended in China using China-origin HFC components and further processed in the United States (inquiry merchandise).

Methodology

Commerce is conducting this circumvention inquiry in accordance with section 781(a) of the Act, and 19 CFR 351.226. See *Preliminary Determination* for a full description of

³ See *Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Affirmative Determination of Circumvention with Respect to R-410B, R-407G, and a Certain Custom Blend from the People's Republic of China*, 89 FR 25568 (April 11, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

⁴ See Memorandum, "Decision Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China with Respect to Imports of R-410B and R-407G, and a Certain Custom Blend from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

the methodology.⁵ We have continued to apply this methodology, without exception, and incorporate by reference this description of the methodology, for our final determination.

Analysis of Comments Received

All issues raised in this inquiry are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice in Appendix I. Based on our analysis of the comments received from interested parties, we have not made any changes to the *Preliminary Determination*.

Final Circumvention Determination

We determine that imports of R-410B, R-407G, and the custom HFC blend which are blended in China using China-origin HFC components and further processed in the United States, would be circumventing the *Order* whether such imports were by one company, or all companies. Accordingly, we are applying our decision on a country-wide basis. As a result, in accordance with section 781(a) of the Act, we determine that inquiry merchandise should be included within the scope of the *Order*. For a detailed explanation of our determination with respect to the respondents, see *Preliminary Determination*, and the Issues and Decision Memorandum. See the “Suspension of Liquidation and Cash Deposit Requirements” section, below, for details regarding suspension of liquidation and cash deposit requirements. See the “Certifications” and “Certification Requirements” sections below for details regarding the use of certifications for inquiry merchandise imported from China.

Suspension of Liquidation and Cash Deposit Requirements

Based on the final affirmative country-wide determination of circumvention for China, in accordance with section 19 CFR 351.226(l)(3)(i)-(ii), Commerce will direct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of previously suspended entries and to suspend liquidation and require a cash deposit of estimated duties on unliquidated entries of R-410B, R-407G, and a certain custom HFC blend that were entered, or withdrawn from warehouse, for consumption on or after July 7, 2023, the date of publication of the initiation of this circumvention inquiry in the **Federal Register**.⁶

The blends subject to this inquiry not further processed in the United States

are not subject to this inquiry. Therefore, cash deposits are not required for such merchandise under the *Order*. If an importer imports R-410B, R-407G, and a certain custom HFC blend subject to this inquiry from China and claims that they will not be further processed into subject merchandise in the United States, in order to not be subject to the *Order* cash deposit requirements, the importer is required to meet the certification and documentation requirements described in the “Certifications” and “Certification Requirements” sections below.⁷

Where no certification is provided for an entry, and the *Order* potentially applies to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits: (1) for entries of R-410B, R-407G, and a certain custom HFC blend for which the exporter has a company-specific cash deposit rate under the AD *Order*, the cash deposit rate will be the company-specific AD cash deposit rate established for that company in the most recently completed segment of the proceeding; (2) for all Chinese exporters of R-410B, R-407G, and a certain custom HFC blend that do not have a company-specific cash deposit rate under the AD *Order*, the AD cash deposit rate will be the cash deposit rate for the China-wide entity (*i.e.*, 216.37 percent);⁸ and (3) for all non-Chinese exporters of R-410B, R-407G, and a certain custom HFC blend which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These suspension of liquidation instructions and cash deposit requirements will remain in effect until further notice.

Certified Entries

Entries for which the importer has met the certification requirements described below and in Appendix II to this notice will not be subject to either the suspension of liquidation or the cash deposit requirements described above. Failure to comply with the applicable requisite certification requirements may result in the merchandise being subject to duties.

Certifications

To administer the country-wide affirmative determination of circumvention, Commerce established importer certifications, which allow

companies to certify that specific entries of R-410B, R-407G, and a certain custom HFC blend are not subject to suspension of liquidation or the collection of cash deposits pursuant to this country-wide affirmative determination of circumvention because the merchandise is not further processed into subject HFC blends in the United States (*see* Appendix II to this notice).

Importers that claim that their entries of merchandise subject to this inquiry from China are not subject to suspension of liquidation or the collection of cash deposits because the merchandise is not further processed into subject merchandise in the United States must complete the applicable certification and meet the certification and documentation requirements described below, as well as the requirements identified in the importer certification.

Certification Requirements

Importers are required to complete and maintain the applicable importer certification and retain all supporting documentation. The importer certification must be completed, signed, and dated by the time the entry summary is filed for the relevant entry. The importer, or the importer's agent, must submit the importer's certification to CBP as part of the entry process by uploading it into the document imaging system (DIS) in ACE. Where the importer uses a broker to facilitate the entry process, the importer should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to certify on behalf of the importer.

Additionally, the claims made in the certification and any supporting documentation are subject to verification by Commerce and/or CBP. Importers are required to maintain the certifications and supporting documentation until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For all R-410B, R-407G, and a certain custom HFC blend from China that was entered, or withdrawn from warehouse, for consumption during the period July 7, 2023 (the date of initiation of this circumvention inquiry), through the date of publication of the preliminary determination in the **Federal Register**, where the entry has not been liquidated (and entries for which liquidation has not become final), the relevant

⁷ The certification language at Appendix II, section E for this final determination reflects a minor modification from the certification included in the *Preliminary Determination*.

⁸ See *Order*.

⁵ See *Preliminary Determination* PDM at 4-15.

⁶ See *Initiation Notice*.

certification should already be complete and signed.

For unliquidated entries (and entries for which liquidation has not become final) of R-410B, R-407G, and a certain custom HFC blend from China that were declared as non-AD type entries (e.g., type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period July 7, 2023 (the date of initiation of this circumvention inquiry), through the date of publication of the preliminary determination in the **Federal Register**, for which no importer certification may be made, importers must file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD type entries to AD type entries (e.g., type 01 to type 03). The importer should pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties, including AD/CVD duties.

If it is determined that an importer has not met the certification and/or related documentation requirements for certain entries, Commerce intends to instruct CBP to suspend, pursuant to this final affirmative country-wide determination of circumvention and the *Order*,⁹ all unliquidated entries for which these requirements were not met and to require the importer to post applicable cash deposits equal to the rate noted above.

Opportunity To Request an Administrative Review

Each year during the anniversary month of the publication of an AD or CVD order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Act, may request, in accordance with 19 CFR 351.213, that Commerce conduct an administrative review of that AD or CVD order, finding, or suspended investigation. An interested party who would like Commerce to conduct an administrative review should wait until Commerce announces via the **Federal Register** the next opportunity during the anniversary month of the publication of the *Order* to submit such requests. The anniversary month for this *Order* is August.

Administrative Protective Order

This notice will serve as the only reminder to all parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information

disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(2).

Dated: July 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Period of Circumvention Inquiry
- VI. Changes from the *Preliminary Determination*
- VII. Discussion of the Issues
 - Comment 1: Retroactive Suspension of Liquidation and Cash Deposit Requirement
 - Comment 2: Certification Requirement
 - Comment 3: Argument Concerning Circumvention by Additional Companies
 - Comment 4: Whether the Preliminary Determination is Contrary to Law
 - Comment 5: Whether the Determination with Respect to R-410B is Supported by Substantial Evidence
- VIII. Recommendation

Appendix II

Importer Certification

I hereby certify that:
 A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS of IMPORTING COMPANY};

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the hydrofluorocarbon (HFC) blend R-410B, R-407G, and a certain custom HFC blend produced in China that entered under the entry number(s) identified below, and which are covered by this certification. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the importation of the product, including the exporter's and/or foreign seller's identity and location;

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The R-410B, R-407G, and a certain custom HFC blend covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The R-410B, R-407G, and a certain custom HFC blend covered by this certification was shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED} located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. Select the appropriate statement below:

___ I have direct personal knowledge of the facts regarding the end use of the imported products covered by this certification because my company is the end user of the imported product covered by this certification and I certify that the R-410B, R-407G, and a certain custom HFC blend will not be used to produce subject merchandise. "Direct Personal Knowledge" includes information contained within my company's books and records.

___ My company is not the end user of the imported product covering this certification, however, I have personal knowledge of the facts regarding the end use of the imported products covered by this certification. I have been able to contact the end user of the imported product and confirm that it will not use this product to produce subject merchandise. The end user of the imported product is {COMPANY NAME} located at {ADDRESS}. "Personal knowledge" includes facts obtained from another party (e.g., correspondence received by the importer from the end user of the product).

F. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:
 Entry Summary Line Item #:
 Foreign Seller:
 Foreign Seller's Address:
 Foreign Seller's Invoice #:
 Foreign Seller's Invoice Line Item #:
 Producer:
 Producer's Address:

G. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (i.e., documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, chemical testing specifications, production records, invoices, etc.) for the later of: (1) the date that is five years after the date of the latest entry covered by the certification or; (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

H. I understand that {IMPORTING COMPANY} is required to submit a copy of the importer certification as part of the entry summary by uploading them into the document imaging system (DIS) in ACE, and

⁹ See *Order*.

to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, upon request of either agency;

I. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

J. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) order on HFC blends from China. I understand that such finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

K. I understand that agents of the importer, such as brokers, are not permitted to make this certification. Where a broker or other party was used to facilitate the entry process, {NAME OF IMPORTING COMPANY} obtained the entry summary number and date of entry summary from that party.

L. This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**.

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}

[FR Doc. 2024-15264 Filed 7-10-24; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-893-002, A-487-001, A-546-001, A-475-845, A-565-804, A-455-807, A-856-002, A-583-873]

Mattresses From Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing antidumping duty orders on mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan.

DATES: Applicable July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett (Bosnia and Herzegovina); T.J. Worthington (Bulgaria); Adam Simons (Burma and Taiwan); Adam Simons and Caroline Carroll (Italy); Sun Cho (the Philippines); Dakota Potts (Poland); and Andrew Hart (Slovenia), AD/CVD Operations, Offices II, III, IV, V, and IX Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4161, (202) 482-4567, (202) 482-6172, (202) 482-4948, (202) 482-6458, (202) 482-0223, or (202) 482-1058, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 2024, Commerce published in the **Federal Register** its affirmative final determinations in the less-than-fair-value (LTFV) investigations of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan.¹ On June 28, 2024, the ITC

¹ See *Mattresses from Bosnia and Herzegovina: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 89 FR 42448 (May 15, 2024); *Mattresses from Bulgaria: Final Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 42443 (May 15, 2024); *Mattresses from Burma: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 89 FR 42427 (May 15, 2024) (*Burma Final Determination*); *Mattresses from Italy: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 89 FR 42429 (May 15, 2024); *Mattresses from the Philippines: Final Affirmative Determination of Sales at Less Than*

notified Commerce of its final determinations, pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan.²

Scope of the Orders

The products covered by these orders are mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan. For a complete description of the scope of these orders, see the appendix to this notice.

Antidumping Duty Orders

On July 5, 2024, in accordance with section 735(d) of the Act, the ITC published in the **Federal Register** its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reason of imports of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan.³ Therefore, in accordance with sections 735(c)(2) and 736 of the Act, Commerce is issuing these antidumping duty orders. Because the ITC determined that imports of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan are materially injuring a U.S. industry, unliquidated entries of such merchandise from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further

Fair Value and Final Affirmative Determination of Critical Circumstances, 89 FR 42432 (May 15, 2024); *Mattresses from Poland: Final Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 42435 (May 15, 2024); *Mattresses from Slovenia: Final Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 42437 (May 15, 2024); and *Mattresses from Taiwan: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 89 FR 42439 (May 15, 2024).

² See ITC's Letter, Investigation Nos. 731-TA-1629-1631, 1633, 1636-1638, and 1640 (Final), dated June 28, 2024.

³ See *Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, Philippines, Poland, Slovenia, and Taiwan: Determinations*, 89 FR 55657 (July 5, 2024).

instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan. With the exception of entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below, antidumping duties will be assessed on unliquidated entries of mattresses from Bosnia and Herzegovina, Bulgaria, Italy, the Philippines, Poland, Slovenia, and Taiwan entered, or withdrawn from warehouse, for consumption, on or after March 1, 2024, the date of publication of the *Preliminary Determinations*.⁴ As further described below, antidumping duties will be assessed on unliquidated entries of mattresses from Burma entered, or withdrawn from warehouse, for consumption, on or after December 2, 2023, which is 90 days prior to the date of publication of the *Burma Preliminary Determination*.

Critical Circumstances

With respect to the ITC's negative critical circumstances determination on imports of mattresses from Bosnia and Herzegovina, Italy, the Philippines, and Taiwan, we will instruct CBP to lift suspension and to refund any cash

⁴ See *Mattresses from Bosnia and Herzegovina: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 89 FR 15161 (March 1, 2024) (*Bosnia and Herzegovina Preliminary Determination*); *Mattresses from Bulgaria: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 15136 (March 1, 2024); *Mattresses from Burma: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 89 FR 15149 (March 1, 2024) (*Burma Preliminary Determination*); *Mattresses from Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 89 FR 15143 (March 1, 2024) (*Italy Preliminary Determination*); *Mattresses from the Philippines: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances*, 89 FR 15146 (March 1, 2024) (*Philippines Preliminary Determination*); *Mattresses from Poland: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 15155 (March 1, 2024); *Mattresses from Slovenia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 89 FR 15121 (March 1, 2024) (*Slovenia Preliminary Determination*); and *Mattresses from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 89 FR 15129 (March 1, 2024) (*Taiwan Preliminary Determination*) (collectively, *Preliminary Determinations*).

deposits made to secure the payment of estimated antidumping duties with respect to entries of the subject merchandise from Bosnia and Herzegovina, Italy, the Philippines, and Taiwan entered, or withdrawn from warehouse, for consumption on or after December 2, 2023 (*i.e.*, 90 days prior to the date of the publication of the *Bosnia and Herzegovina Preliminary Determination*, *Italy Preliminary Determination*, *Philippines Preliminary Determination*, and *Taiwan Preliminary Determination*), but before March 1, 2024 (*i.e.*, the date of publication of the *Preliminary Determinations*).

Regarding Burma, the ITC found that critical circumstances exist with respect to imports subject to Commerce's affirmative critical circumstances finding within the meaning of section 735(b)(4)(A) of the Act. As a result of Commerce's affirmative critical circumstances determination under section 735(a)(3) of the Act, and the ITC's affirmative critical circumstances determination under section 735(b)(4)(A) of the Act, retroactive duties will be applied to the relevant imports for a period of 90 days prior to the suspension of liquidation.⁵ Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of mattresses from Burma. Antidumping duties will be assessed on unliquidated entries of mattresses from Burma for Glory Home Myanmar Limited, Glory (Hong Kong) Business Limited, and all other producers and exporters of subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 2, 2023, which is 90 days prior to the date of publication of the *Burma Preliminary Determination*, in accordance with the critical circumstances finding in the *Burma Final Determination*. Antidumping duties will not be assessed on any entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below.

⁵ See section 735(c)(4) of the Act; see also Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994), at 876 ("If both agencies make affirmative critical circumstances determinations in their final investigations, retroactive duties will be applied for a period ninety days prior to suspension of liquidation.").

Continuation of Suspension of Liquidation and Cash Deposits

Except as noted in the "Provisional Measures" section of this notice, in accordance with section 736 of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated dumping margins indicated in the tables below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the rates listed below. The all-others rate applies to all producers or exporters not specifically listed, as appropriate.

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. None of the exporters of mattresses requested Commerce to extend the four-month period to six months in these investigations.

The provisional measures period, beginning on the date of publication of the *Preliminary Determinations*, ended on June 28, 2024. Therefore, in accordance with section 733(d) of the Act and our practice,⁶ Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan entered, or withdrawn from warehouse, for consumption after June 28, 2024, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury determinations in the

⁶ See, e.g., *Certain Corrosion-Resistant Steel Products from India, India, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders*, 81 FR 48390, 48392 (July 25, 2016).

Federal Register. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determinations in the **Federal Register**.

Estimated Dumping Margins

The estimated dumping margins are as follows:

BOSNIA AND HERZEGOVINA

Exporter/producer	Estimated dumping margin (percent)
General Toys Co., Limited	* 217.38
Mirisan D.O.O	* 217.38
Noctis D.O.O	* 217.38
All Others	217.38

* Rate based on facts available with adverse inferences.

BULGARIA

Exporter/producer	Estimated dumping margin (percent)
BRN Sleep Products	* 106.27
Fumeibai Industrial Co., Ltd	* 106.27
All Others	106.27

* Rate based on facts available with adverse inferences.

BURMA

Exporter/producer	Estimated dumping margin (percent)
Glory Home Myanmar Limited ...	* 181.71
Glory (Hong Kong) Business Limited	* 181.71
All Others	181.71

* Rate based on facts available with adverse inferences.

ITALY

Exporter/producer	Estimated dumping margin (percent)
Alessanderx SpA	* 257.06
Gruppo Buoninfante Industriale S.P.A	* 257.06
Silver Prince S.R.L	* 257.06
All Others	257.06

* Rate based on facts available with adverse inferences.

⁷ Commerce determined that the following companies are a single entity: Maxiflex Philippines Corp.; Multiflex RNC Philippines, Inc.; Multimax Industries Corporation; and Polyfoam-RGC International Corporation. See *Philippines*

THE PHILIPPINES

Exporter/producer	Estimated dumping margin (percent)
Maxiflex Philippines Corp./ Polyfoam-RGC International Corporation/Multiflex RNC Philippines, Inc./Multimax Industries Corporation ⁷	* 538.23
All Others	538.23

* Rate based on facts available with adverse inferences.

POLAND

Exporter/producer	Estimated dumping margin (percent)
COM40 SP. Z O.O. SP. K	* 330.71
CORRECT-K BLASZCZYK I WSPOLNICY SPOLKA	* 330.71
ARJOHUNTLEIGH AB	* 330.71
COM FORTY LIMITED SP	* 330.71
All Others	330.71

* Rate based on facts available with adverse inferences.

SLOVENIA

Exporter/producer	Estimated dumping margin (percent)
Noctis D.O.O	* 744.81
Stokke AS	* 744.81
BBCC Int. D.O.O	* 744.81
Mirisan D.O.O	* 744.81
All Others	744.81

* Rate based on facts available with adverse inferences.

TAIWAN

Exporter/producer	Estimated dumping margin (percent)
Fuyue Mattresses Industry Co., Ltd	* 624.50
Yong Yi Cheng Co., Ltd	* 624.50
Star Seeds Co., Ltd	* 624.50
All Others	624.50

* Rate based on facts available with adverse inferences.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled “*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*” in the

Preliminary Determination and accompanying *Preliminary Decision Memorandum*.

Federal Register.⁸ On September 27, 2021, Commerce also published the notice titled “*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** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce’s online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at <https://access.trade.gov>, within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called “AISL-Annual Inquiry Service List.”¹¹

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the

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 will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register** also known as the anniversary month. For example, for an order under case number A-000-000 that 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.

Procedural Guidance, the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. 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."¹² Accordingly, as stated above, the petitioners and foreign governments should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list for those orders for which they qualify as an interested party. Pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the antidumping duty orders with respect to mattresses from Bosnia and Herzegovina, Bulgaria, Burma, Italy, the Philippines, Poland, Slovenia, and Taiwan pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at <https://www.trade.gov/data-visualization/adcvd-proceedings>.

These antidumping duty orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: July 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The products covered by these orders are all types of youth and adult mattresses. The term "mattress" denotes an assembly of materials that at a minimum includes a "core," which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) "upholstery," the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) "ticking," the outermost layer of fabric or other material (e.g., vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of these orders is restricted to only "adult mattresses" and "youth mattresses." "Adult mattresses" are frequently described as "twin," "extra-long twin," "full," "queen," "king," or "California king" mattresses. "Youth mattresses" are typically described as "crib," "toddler," or "youth" mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (e.g., frameless futon mattress and tri-fold mattress).

The scope encompasses all types of "innerspring mattresses," "non-innerspring mattresses," and "hybrid mattresses." "Innerspring mattresses" contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as "innerspring mattresses" or "hybrid mattresses." "Hybrid mattresses" contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

"Non-innerspring mattresses" are those that do not contain any innerspring units. They are generally produced from foams (e.g., polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of these orders may be imported independently, as part of furniture or furniture mechanisms (e.g., convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a "mattress foundation"). "Mattress foundations" are any base or support for a mattress. Mattress foundations are commonly referred to as "foundations," "boxsprings," "platforms," and/or "bases." Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture

mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of these orders are "futon" mattresses. A "futon" is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A "futon mattress" is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon. Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as "convertible sofas," "sofabeds," "sofa chaise sleepers," "futons," "ottoman sleepers," or a like description.

Also excluded from the scope of these orders are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. See *Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders*, 84 FR 55285 (October 16, 2019).

Also excluded from the scope of these orders are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of these orders are "mattress toppers." A "mattress topper" is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

Also excluded from the scope are the following hospital and patient care setting surfaces. Products that fall within the below categories and meet all the exclusion factors in the respective category qualify for such exclusion, regardless of whether they may be referenced as a mattress.

Air Surfaces with all of the following characteristics: with the foot end comprised of either die-cut construction foam or air bladders to allow extension and retraction of the surface; enclosed in a fluid-resistant polyurethane-coated ticking with a zipper; with welded seams on the ticking, which are two or more layers of coated material thermally fused together with a permanent bond; with the core including air bladders, with or without foam inside; with a unique device identifier label for medical devices issued by an FDA-accredited agency and

¹² See *Final Rule*, 86 FR at 52335.

listed in the FDA-administered Global Unique Device Identification Database.

Stretcher Surfaces with all of the following characteristics: with a nominal thickness of 5 inches or less; with the foam core width tapered at one end; enclosed in a fluid-resistant polyurethane-coated ticking with a zipper; with welded seams on the ticking, which are two or more layers of coated material thermally fused together with a permanent bond; with the exterior of the ticking containing a welded flap to cover the ticking zipper; with loop velcro attached to the ticking to allow for the stretcher surface to be firmly affixed to the stretcher; with a unique device identifier label for medical devices issued by an FDA-accredited agency and listed in the FDA-administered Global Unique Device Identification Database.

Birthing Bed Surfaces with all of the following characteristics: with a nominal thickness of 5 inches or less; with a foam core in two pieces that have either a V-shaped cutout or U-Shaped cutout; enclosed in a fluid-resistant polyurethane-coated ticking with a zipper; with welded seams on the ticking, which are two or more layers of coated material thermally fused together with a permanent bond; with attachment fasteners extending from the bottom of the surface comprised of snaps or plastic hook(s); with a unique device identifier label for medical devices issued by an FDA-accredited agency and listed in the FDA-administered Global Unique Device Identification Database.

Foam Surfaces with all the following characteristics: with a nominal thickness of 6.5 inches or less; with a foam core that has articulation lines cut into the foam and/or die-cut construction in a portion of the foam to allow movement of the surface; enclosed in a fluid-resistant polyurethane-coated ticking with a zipper; with the ticking made of material meeting ASTM F1671B-07 requirements for porosity and ISO 10993 requirements for biocompatibility; with welded seams on the ticking, which are two or more layers of coated material thermally fused together with a permanent bond; with brackets or attachment knobs embedded in the surface core to allow the surface to be firmly affixed to the hospital bed frame; with a unique device identifier label for medical devices issued by an FDA-accredited agency and listed in the FDA-administered Global Unique Device Identification Database, where the label includes the manufacturer's name and address as well as the product's name, date of manufacture, serial number, and Global Trade Identification Number (GTIN).

The products subject to these orders are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to these orders may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to these orders is dispositive.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

Antidumping Duty Order on Hydrofluorocarbon Blends From the People's Republic of China: Final Affirmative Determination of Circumvention With Respect to R-410A From the Republic of Türkiye

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of R-410A, completed in the Republic of Türkiye (Türkiye) using the People's Republic of China (China)-origin hydrofluorocarbon (HFC) components, and exported from Türkiye, are circumventing the antidumping duty (AD) order on HFC blends from China.

DATES: Applicable July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Paul Senoyuit, 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) 482-6106.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2016, Commerce published in the *Federal Register* the AD order on HFC blends from China.¹ On July 7, 2023, Commerce initiated a country-wide circumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(d)(1)(ii) to determine whether imports of R-410A, completed in Türkiye using HFC components R-32 (difluoromethane) and R-125 (pentafluoroethane) (collectively, China-origin components) manufactured in China, are circumventing the *Order* and, accordingly, should be covered by the scope of the *Order*.² On December 11, 2023, Commerce published in the *Federal Register* its *Preliminary Determination* that imports of R-410A completed in Türkiye using China-origin HFC components and subsequently exported from Türkiye to the United States are circumventing the *Order*.³

¹ See *Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*Order*).

² See *Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty Order*, 88 FR 43275 (July 7, 2023) (*Initiation Notice*).

³ See *Antidumping Duty Order on Hydrofluorocarbon Blends from the People's*

For a summary of events that occurred since the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for consideration in the final determination, see the Issues and Decision Memorandum.⁴ 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>.

Scope of the Order

The merchandise covered by the *Order* is certain HFC blends. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers imports of HFC blend R-410A, completed in Türkiye using China-origin HFC components and subsequently exported from Türkiye to the United States (inquiry merchandise).

Methodology

Commerce is conducting this circumvention inquiry in accordance with section 781(b) of the Act, and 19 CFR 351.226. See *Preliminary Determination* PDM for a full description of the methodology.⁵ We have continued to apply this methodology, without exception, and incorporate by reference this description of the methodology, for our final determination.

Analysis of Comments Received

All issues raised in this inquiry are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice in Appendix I. Based on our analysis of the comments

Republic of China: Preliminary Affirmative Determination of Circumvention with Respect to R-410A from the Republic of Turkey, 88 FR 85871 (December 11, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

⁴ See Memorandum, "Decision Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China with Respect to Imports of R-410A from the Republic of Türkiye," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ See *Preliminary Determination* PDM at 3-13.

received from the petitioners,⁶ we made the following change to the *Preliminary Determination*: We determine to apply retroactive suspension of liquidation to respondent Cantas Ic Ve Dis Ticaret Sogutma Sistermleri Sanayi A.S. (Cantas), as well as on a country-wide basis, effective November 4, 2021.

Final Circumvention Determination

We determine that imports of R-410A completed in Türkiye by Cantas, using China-origin HFC components that are subsequently exported from Türkiye to the United States, are circumventing the *Order*. As a result, in accordance with section 781(b) of the Act, we determine that this merchandise should be included within the scope of the *Order*. For a detailed explanation of our determination with respect to Cantas, see *Preliminary Determination PDM*, the Issues and Decision Memorandum, and the “Use of Adverse Facts Available” section below.

We also determine that imports of R-410A completed in Türkiye using China-origin HFC components, that are subsequently exported from Türkiye to the United States, would be circumventing the *Order* whether such imports were by one company, or all companies. Accordingly, we are applying our decision on a country-wide basis. As a result, in accordance with section 781(b) of the Act, we determine that this merchandise should be included within the scope of the *Order*; see the “Suspension of Liquidation and Cash Deposit Requirements” section, below, for details regarding suspension of liquidation and cash deposit requirements. See the “Certifications” and “Certification Requirements for Türkiye” sections below for details regarding the use of certifications for inquiry merchandise exported from Türkiye.

Use of Adverse Facts Available (AFA)

In this inquiry, Commerce continues to find that necessary information is not available on the record with respect to Cantas within the meaning of section 776(a)(1) of the Act, and that Cantas withheld requested information, failed to provide requested information by the deadline or in the form or manner requested, and significantly impeded the inquiry pursuant to sections 776(a)(1), (A), (B), and (C) of the Act. Moreover, Commerce continues to find that this company failed to cooperate by

not acting to the best of its ability to provide the requested information pursuant to section 776(b)(1) of the Act. Consequently, we continue to use adverse inferences with respect to Cantas in selecting from among the facts otherwise available on the record, pursuant to sections 776(a) and (b) of the Act, for the reasons discussed in the *Preliminary Determination* and the Issues and Decision Memorandum.⁷ Based on AFA, we determine that Cantas exported inquiry merchandise and that U.S. entries of that merchandise are circumventing the *Order*. Interested parties that wish to have their suspended entries, if any, reviewed should request an administrative review of the relevant suspended entries during the next anniversary month of the *Order* (i.e., August 2024).⁸ Additionally, we are precluding Cantas from participating in the certification program for exports of R-410A completed in Türkiye and subsequently exported from Türkiye to the United States.

Final Determination of No Shipments

Based on the information provided by ICE Sogutma Sanayi Ve Ticaret Ltd. (ICE) in this circumvention inquiry, and Commerce’s verification of the information provided by ICE,⁹ Commerce continues to find, as it did in the *Preliminary Determination*, that ICE had no shipments of inquiry merchandise to the United States during the period of inquiry, January 1, 2019 through June 30, 2023.¹⁰

Suspension of Liquidation and Cash Deposit Requirements

Based on the affirmative country-wide determination of circumvention for Türkiye, in accordance with 19 CFR 351.226(l)(3)(iii)(A), we will direct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of previously suspended entries and to suspend liquidation and require a cash deposit of estimated duties on unliquidated entries of R-410A from Türkiye that were entered, or withdrawn from warehouse for consumption, prior to the date of publication of the notice of initiation of the inquiry, retroactive to, and

including, November 4, 2021,¹¹ which is a departure from our standard practice of applying the date specified in 19 CFR 351.226(l)(3)(ii) (i.e., the date of publication of the initiation notice).¹² CBP shall require cash deposits in accordance with the rate established for the China-wide entity (i.e. 216.37 percent).¹³

R-410A produced in Türkiye that is not subject to this inquiry. Therefore, cash deposits are not required for such merchandise under the *Order*. If an importer imports R-410A from Türkiye and claims that it was not produced using China-origin HFC components, in order to not be subject to the *Order* cash deposit requirements, the importer and exporter are required to meet the certification and documentation requirements described in the “Certifications” and “Certification Requirements for Türkiye” sections, below.

Commerce has established the following third-country case number for Türkiye in the Automated Commercial Environment (ACE) for such entries: A-489-400-000. For Cantas, which will not be permitted to file a certification in accordance with this determination, Commerce will direct CBP, for all entries of R-410A from Türkiye produced or exported by Cantas, to suspend liquidation and require a cash deposit at the rate established for the China-wide entity, i.e., 216.37 percent, under this third country case number.¹⁴

Where no certification is provided for an entry, and the *Order* potentially applies to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the rate established for the China-wide entity, i.e., 216.37 percent, under the third country case number above. These suspension of liquidation instructions will remain in effect until further notice.

Certified Entries

Entries for which the importer and exporter have met the certification requirements described below and in Appendix II to this notice will not be

¹¹ November 4, 2021, was the date Commerce’s circumvention regulations became effective. See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September, 20, 2021) (Circumvention Regulations).

¹² See Issues and Decision Memorandum at Comment 1.

¹³ See *Order*, 81 FR at 55438.

¹⁴ Cantas is not currently eligible to participate in the certification program as either producer or exporter. In addition, other parties exporting R-410A produced by Cantas will likewise not be eligible to participate in the certification program with regard to such products.

⁶ The petitioners in this inquiry are the American HFC Coalition which consists of its individual members Arkema, Inc., The Chemours Company FC LLC, Honeywell International Inc., and Mexichem Fluor Inc.

⁷ See *Preliminary Determination PDM*; see also Issues and Decision Memorandum.

⁸ See 19 CFR 351.213(b).

⁹ See Memorandum, “Verification of the Response by ICE Sogutma Sanayi Ve Ticaret Ltd. STL in the Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People’s Republic of China,” dated May 28, 2024.

¹⁰ See *Preliminary Determination PDM* at 8–9; see also Issues and Decision Memorandum at Comment 2.

subject to suspension of liquidation, or the cash deposit requirements described above. Failure to comply with the applicable requisite certification requirements may result in the merchandise being subject to duties.

Certifications

To administer the country-wide affirmative determination of circumvention, Commerce established importer and exporter certifications, which allow companies to certify that specific entries of R-410A from Türkiye are not subject to suspension of liquidation or the collection of cash deposits pursuant to this country-wide affirmative determination of circumvention because the merchandise is not made with China-origin components (*see* Appendix II to this notice).

Because Cantas was non-cooperative, it is not currently eligible to use the certification described above.¹⁵ Commerce may reconsider the eligibility of Cantas in the certification process in a future administrative review. *See* section, “Opportunity to Request an Administrative Review,” below.

Importers and exporters that claim that the entry of R-410A from Türkiye is not subject to suspension of liquidation or the collection of cash deposits because the merchandise is not made with China-origin components must complete the applicable certification and documentation requirements described below, as well as the requirements identified in the applicable certification.

Certification Requirements for Türkiye

Importers are required to complete and maintain the applicable importer certification, and maintain a copy of the applicable exporter certification, and retain all supporting documentation for both certifications. With the exception of the entries described below, the importer certification must be completed, signed, and dated by the time the entry summary is filed for the relevant entry. The importer, or the importer’s agent, must submit both the importer’s certification and the exporter’s certification to CBP as part of

the entry process by uploading them into the document imaging system (DIS) in ACE. Where the importer uses a broker to facilitate the entry process, the importer should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to certify on behalf of the importer.

Exporters are required to complete and maintain the applicable exporter certification and provide the importer with a copy of that certification and all supporting documentation (*e.g.*, invoice, purchase order, production records, *etc.*). With the exception of the entries described below, the exporter certification must be completed, signed, and dated by the time of shipment of the relevant entries. The exporter certification should be completed by the party selling the R-410A that was manufactured in Türkiye to the United States.

Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. Importers and exporters are required to maintain the certifications and supporting documentation until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For all R-410A from Türkiye that was entered, or withdrawn from warehouse, for consumption during the period July 7, 2023 (the date of initiation of this circumvention inquiry), through the date of publication of the preliminary determination in the **Federal Register**, where the entry has not been liquidated (and entries for which liquidation has not become final), the relevant certification should already be complete and signed. Because Commerce determined to apply retroactive suspension to November 4, 2021,¹⁶ for R-410A from Türkiye that was entered, or withdrawn from warehouse, for consumption during the period November 4, 2021 through July 6, 2023 (the day before the date of initiation of this circumvention inquiry), where the entry has not been liquidated (and entries for which liquidation has not become final), the relevant certification should be completed and signed as soon as practicable, but not later than 45 days after the date of publication of this final determination in the **Federal Register**. For such entries, importers and exporters each have the option to

complete a blanket certification covering multiple entries, individual certifications for each entry, or a combination thereof. The exporter must provide the importer with a copy of the exporter certification within 45 days of the date of publication of this final determination in the **Federal Register**.

For unliquidated entries (and entries for which liquidation has not become final) of R-410A from Türkiye that were declared as non-AD type entries (*e.g.*, type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period November 4, 2021 (the date of the start of retroactive suspension), through the date of publication of the *Preliminary Determination* in the **Federal Register**, for which none of the above certifications may be made, importers must file a Post Summary Correction with CBP, in accordance with CBP’s regulations, regarding conversion of such entries from non-AD type entries to AD type entries (*e.g.*, type 01 to type 03). Importers should report those AD type entries using the third country case numbers identified in the “Suspension of Liquidation and Cash Deposit Requirements” section, above. The importer should pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties, including AD/CVD duties.

If it is determined that an importer and/or exporter has not met the certification and/or related documentation requirements for certain entries, Commerce intends to instruct CBP to suspend, pursuant to this preliminary affirmative country-wide determination of circumvention and the *Order*,¹⁷ all unliquidated entries for which these requirements were not met and to require the importer to post applicable cash deposits equal to the rate noted above.

Opportunity To Request an Administrative Review

Each year during the anniversary month of the publication of an AD or CVD order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Act, may request, in accordance with 19 CFR 351.213, that Commerce conduct an administrative review of that AD or CVD order, finding, or suspended investigation. An interested party who would like Commerce to conduct an administrative review should wait until Commerce announces via the **Federal Register** the next opportunity during the

¹⁵ *See Preliminary Determinations PDM at the “Use of Facts Available with Adverse Inferences” section; see also, e.g., Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 63 FR 18364, 18366 (April 15, 1998), unchanged in *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672, 54675–76 (October 13, 1998).

¹⁶ *See Circumvention Regulations*, 86 FR at 52347–48.

¹⁷ *See Order*.

anniversary month of the publication of the *Order* to submit such requests. The anniversary month for this *Order* is August.

Administrative Protective Order

This notice will serve as the only reminder to all parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(2).

Dated: July 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Merchandise Subject to the Circumvention Inquiry
- V. Period of Circumvention Inquiry
- VI. Changes from the *Preliminary Determination*
- VII. Discussion of the Issues
 - Comment 1: Retroactive Suspension of Liquidation and Cash Deposit Requirement
 - Comment 2: No Shipment Determination
- VIII. Recommendation

Appendix II

Importer Certification

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS of IMPORTING COMPANY};

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the hydrofluorocarbon (HFC) blend R-410A produced in Türkiye that entered under the entry number(s) identified below, and which are covered by this certification. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the importation of the product, including the exporter's and/or foreign seller's identity and location;

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The R-410A covered by this certification were imported by {NAME OF IMPORTING COMPANY} on behalf of {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER}.

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The R-410A covered by this certification was shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED} located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. I have personal knowledge of the facts regarding the production of the imported products covered by this certification.

"Personal knowledge" includes facts obtained from another party, (e.g., correspondence received by the importer (or exporter) from the producer regarding the source of the HFC components (i.e., R-32 and R-125) used to produce the R-410A);

F. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:

Entry Summary Line Item #:

Foreign Seller:

Foreign Seller's Address:

Foreign Seller's Invoice #:

Foreign Seller's Invoice Line Item #:

Country of Origin of HFC Components:

Producer:

Producer's Address:

G. The R-410A covered by this certification do not contain HFC components (i.e., R-32 and R-125) produced in the People's Republic of China (China);

H. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (i.e., documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, chemical testing specifications, productions records, invoices, etc.) for the later of: (1) the date that is five years after the date of the latest entry covered by the certification or; (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

I. I understand that {IMPORTING COMPANY} is required to maintain a copy of the exporter's certification (attesting to the production and/or exportation of the imported merchandise identified above), and any supporting documentation provided to the importer by the exporter, until the later of: (1) the date that is five years after the date of the latest entry covered by the certification or; (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries;

J. I understand that {IMPORTING COMPANY} is required to submit a copy of the importer and exporter certifications as part of the entry summary by uploading them

into the document imaging system (DIS) in ACE, and to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon request of either agency;

K. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce;

L. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) order on R-410A from Türkiye. I understand that such finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the cash deposits determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

M. I understand that agents of the importer, such as brokers, are not permitted to make this certification;

N. This certification was completed and signed on, or prior to, the date of the entry summary if the entry date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry date is on or before the 14th day after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**, this certification was completed and signed by no later than 45 days after publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry was for consumption during the period November 4, 2021 through July 6, 2023 the relevant certification should be completed and signed as soon as practicable, but not later than 45 days after the date of publication of this final determination in the **Federal Register**.

O. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}
{TITLE OF COMPANY OFFICIAL}
{DATE}

Exporter Certification

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES}; located at

{ADDRESS OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES);

B. I have direct personal knowledge of the facts regarding the production and exportation of the hydrofluorocarbon (HFC) blend R-410A for which sales are identified below. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

C. The R-410A, and the individual components thereof, covered this certification were produced by {NAME OF PRODUCING COMPANY}, located at {ADDRESS OF shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

D. The R-410A produced in Türkiye do not contain HFC components (*i.e.*, R-32 and R-125) produced in the People's Republic of China (China);

E. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:

Foreign Seller's Invoice to U.S. Customer

Line item #:

Producer Name:

Producer's Address:

Producer's Invoice # to Foreign Seller: (*If the foreign seller and the producer are the same party, put NA here.*)

Name of Producer of HFC Components:

Location (Country) of Producer of HFC Components:

F. The R-410A covered by this certification was shipped to {NAME OF U.S. PARTY TO WHOM MERCHANDISE WAS SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

G. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, chemical testing specifications, production records, invoices, *etc.*) for the later of: (1) the date that is five years after the latest date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

H. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon request of either agency;

I. I understand that the claims made herein, and the substantiating documentation are subject to verification by CBP and/or Commerce;

J. I understand that failure to maintain the required certification and supporting

documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are within the scope of the antidumping duty order on R-410A from Türkiye. I understand that such a finding will result in:

(i) suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the importer being required to post the cash deposits determined by Commerce; and

(iii) the seller/exporter no longer being allowed to participate in the certification process.

K. I understand that agents of the seller/

exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

L. This certification was completed and signed, and a copy of the certification was provided to the importer, on, or prior to, the date of shipment if the shipment date is more than 14 days after the date of publication of the notice of Commerce's preliminary determination of circumvention in the **Federal Register**. If the entry was for consumption during the period November 4, 2021 through July 6, 2023 the relevant certification should be completed and signed as soon as practicable, but not later than 45 days after the date of publication of this final determination in the **Federal Register**.

M. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}

[FR Doc. 2024-15263 Filed 7-10-24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-028]

Antidumping Duty Order on Hydrofluorocarbon Blends From the People's Republic of China: Final Affirmative Determination of Circumvention With Respect to R-410B From the Republic of Türkiye

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that imports of R-410B from the Republic of Türkiye (Türkiye), which are completed in Türkiye using components originating in the People's Republic of China (China), and further processed in the United States, as specified below, are circumventing the antidumping duty (AD) order on hydrofluorocarbon (HFC) blends from China.

DATES: Applicable July 11, 2024.

FOR FURTHER INFORMATION CONTACT:

Melissa Porpotage, 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) 482-1413.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2016, Commerce published the *Order* in the **Federal Register**.¹ On July 7, 2023, Commerce initiated a country-wide circumvention inquiry to determine whether imports of R-410B from Türkiye, completed in Türkiye using HFC components R-32 (difluoromethane) and R-125 (pentafluoroethane) (collectively, Chinese-origin HFC components) manufactured in China, and further processed in the United States are circumventing the *Order* and, accordingly, should be covered by the scope of the *Order*.² On March 4, 2024, Commerce published in the **Federal Register** its *Preliminary Determination* that imports of R-410B completed in Türkiye using Chinese-origin HFC components and subsequently exported from Türkiye to the United States are circumventing the *Order*.³

For a summary of events that occurred since the *Preliminary Determination*, as well as a full discussion of the issues raised by parties for consideration in the final determination, *see* the Issues and Decision Memorandum.⁴ The Issues and

¹ See *Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*Order*).

² See *Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Circumvention Inquiries on the Antidumping Duty Order*, 88 FR 43275 (July 7, 2023) (*Initiation Notice*).

³ See *Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Affirmative Determination of Circumvention With Respect to R-410B from the Republic of Turkey*, 89 FR 16536 (March 7, 2024) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

⁴ See Memorandum, "Issues and Decision Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China with Respect to Imports of R-410B from the Republic of

Continued

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>.

Scope of the Order

The merchandise covered by the Order is certain HFC blends. For a complete description of the scope of the Order, see the Issues and Decision Memorandum.

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers imports of R-410B from Türkiye, which are completed in Türkiye using Chinese-origin HFC components and further processed in the United States (inquiry merchandise).

Methodology

Commerce conducted this circumvention inquiry in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226. See the *Preliminary Determination* for a full description of the methodology. We have continued to apply this methodology, without exception, and incorporate by reference this description of the methodology, for our final determination.

Analysis of Comments Received

All issues raised in this inquiry are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice in Appendix I. Based on our analysis of the comments received from the petitioner⁵ and the participating respondents,⁶ we made no changes to the *Preliminary Determination*.

Final Circumvention Determination

We determine that imports of R-410B completed in Türkiye, using Chinese-origin HFC components, that are further processed in the United States, are circumventing the Order. As a result, in accordance with section 781(a) of the

Act, we determine that this merchandise should be included within the scope of the Order. Moreover, we determine, in accordance with 19 CFR 351.226(m)(1)(ii) that this determination should be applied on a country-wide basis. See the "Suspension of Liquidation and Cash Deposit Requirements" section below for details regarding suspension of liquidation and cash deposit requirements. See the "Certifications" and "Certification Requirements for Türkiye" sections below for details regarding the use of certifications for inquiry merchandise exported from Türkiye.

Use of Adverse Facts Available (AFA)

In this inquiry, Commerce continues to find that necessary information is not available on the record with respect to by Cantas Ic Ve Dis Ticaret Sogutma Sistemleri Sanayi A.S. (Cantas) within the meaning of section 776(a)(1) of the Act, and that Cantas withheld requested information, failed to provide requested information by the deadline or in the form or manner requested, and significantly impeded the inquiry pursuant to sections 776(a)(1), (A), (B), and (C) of the Act. Moreover, Commerce continues to find that this company failed to cooperate by not acting to the best of its ability to provide the requested information pursuant to section 776(b)(1) of the Act. Consequently, we continue to use adverse inferences with respect to Cantas in selecting from among the facts otherwise available on the record, pursuant to sections 776(a) and (b) of the Act, for the reasons discussed in the *Preliminary Determination*. Based on AFA, we determine that Cantas further processed the inquiry merchandise in the United States into subject merchandise and that U.S. entries of that merchandise are circumventing the Order. Additionally, Cantas is precluded from participating in the certification program established for exports of R-410B completed in Türkiye using Chinese-origin HFC components, that is further processed in the United States.

Suspension of Liquidation and Cash Deposit Requirements

Based on the affirmative determination of circumvention for Türkiye, and our decision to apply this determination on a country-wide basis, pursuant to 19 CFR 351.225(m)(1)(ii), in accordance with 19 CFR 351.226(l)(3)(iii)(A), we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation and require a cash deposit of estimated duties on unliquidated entries of R-410B,

completed in Türkiye using Chinese-origin components, that were entered, or withdrawn from warehouse, for consumption on or after July 7, 2023, the date of publication of the initiation of this circumvention inquiry in the **Federal Register**.⁷ CBP shall require cash deposits in accordance with the rate established for the China-wide entity, *i.e.*, 216.37 percent,⁸ for entries of such merchandise produced in Türkiye.

R-410B produced in Türkiye from HFC blends that is not of Chinese-origin is not subject to this inquiry. Therefore, cash deposits are not required for such merchandise under the Order. If an importer imports R-410B from Türkiye and claims that it was not produced using Chinese-origin HFC components and/or not further processed into subject merchandise in the United States, in order to not be subject to the Order cash deposit requirements, the importer and exporter are required to meet the certification and documentation requirements described in the "Certifications" and "Certification Requirements for Türkiye" sections, below.

Commerce has established the following third-country case number for Türkiye in the Automated Commercial Environment (ACE) for such entries: A-489-400. For Cantas, which will not be permitted to file a certification in accordance with this determination, Commerce will direct CBP, for all entries of R-410B from Türkiye produced or exported by Cantas, to suspend liquidation and require a cash deposit at the rate established for the China-wide entity, *i.e.*, 216.37 percent, under this third-country case number.⁹

Where no certification is provided for an entry, and the Order potentially applies to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits at the rate established for the China-wide entity, *i.e.*, 216.37 percent, under the third-country case number above. These suspension of liquidation instructions will remain in effect until further notice.

Certified Entries

Entries for which the importer and exporter have met the certification requirements described below and in Appendix II to this notice will not be subject to suspension of liquidation or

Türkiye," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ The petitioner is the American HFC Coalition, which consists of individual members Arkema, Inc., The Chemours Company FC LLC, Honeywell International Inc., and Mexichem Fluor Inc.

⁶ The participating respondents are ICE Sogutma Sanayi Ve Ticaret Ltd., SAM Gas Turkey Endustri Gazlari Anonim Sikreti, and IGas Holdings, Inc.

⁷ See *Initiation Notice*, 88 FR at 43275.

⁸ See *Order*, 81 FR at 55438.

⁹ Cantas is not currently eligible to participate in the certification program as either the producer or exporter. In addition, other parties exporting R-410B produced by Cantas will likewise not be eligible to participate in the certification program with regard to such products.

the cash deposit requirements described above. Failure to comply with the applicable requisite certification requirements may result in the merchandise being subject to duties.

Certifications

To administer the country-wide affirmative determination of circumvention, Commerce established importer and exporter certifications, which allow companies to certify that specific entries of R-410B from Türkiye are not subject to suspension of liquidation or the collection of cash deposits pursuant to this affirmative determination of circumvention, as applied on a country-wide basis, because the merchandise is not made with Chinese-origin components and/or it is not further processed into subject merchandise in the United States (see Appendix II to this notice).

Because Cantas was non-cooperative, it is not currently eligible to use the certification described above.¹⁰ Commerce may reconsider the eligibility of Cantas in the certification process in a future administrative review. See the “Opportunity To Request an Administrative Review” section below.

Importers and exporters that claim that the entry of R-410B from Türkiye is not subject to suspension of liquidation or the collection of cash deposits because the merchandise is not made with Chinese-origin components and/or is not further processed into subject merchandise in the United States must complete the applicable certification and meet the certification and documentation requirements described below, as well as the requirements identified in the applicable certification.

Certification Requirements for Türkiye

Importers are required to complete and maintain the applicable importer certification, maintain a copy of the applicable exporter certification, and retain all supporting documentation for both certifications. With the exception of the entries described below, the importer certification must be completed, signed, and dated by the time the entry summary is filed for the relevant entry. The importer, or the

importer’s agent, must submit both the importer’s certification and the exporter’s certification to CBP as part of the entry process by uploading them into the document imaging system (DIS) in ACE. Where the importer uses a broker to facilitate the entry process, the importer should obtain the entry summary number from the broker. Agents of the importer, such as brokers, however, are not permitted to certify on behalf of the importer.

Exporters are required to complete and maintain the applicable exporter certification and provide the importer with a copy of that certification and all supporting documentation (e.g., invoice, purchase order, production records, etc.). With the exception of the entries described below, the exporter certification must be completed, signed, and dated by the time of shipment of the relevant entries. The exporter certification should be completed by the party selling the R-410B that was manufactured in Türkiye to the United States.

Additionally, the claims made in the certifications and any supporting documentation are subject to verification by Commerce and/or CBP. Importers and exporters are required to maintain the certifications and supporting documentation until the later of: (1) the date that is five years after the latest entry date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in United States courts regarding such entries.

For unliquidated entries (and entries for which liquidation has not become final) of R-410B from Türkiye that were declared as non-AD type entries (e.g., type 01) and entered, or withdrawn from warehouse, for consumption in the United States during the period July 7, 2023 (the date of initiation of this circumvention inquiry), through the date of publication of the *Preliminary Determination* in the **Federal Register**, for which none of the above certifications may be made, importers must file a Post Summary Correction with CBP, in accordance with CBP’s regulations, regarding conversion of such entries from non-AD type entries to AD type entries (e.g., type 01 to type 03). Importers should report those AD type entries using the third-country case numbers identified in the “Suspension of Liquidation and Cash Deposit Requirements” section, above. The importer should pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties, including

antidumping/countervailing duties (CVD).

If it is determined that an importer and/or exporter has not met the certification and/or related documentation requirements for certain entries, Commerce intends to instruct CBP to suspend, pursuant to this affirmative determination of circumvention, as applied on a country-wide basis, and the *Order*, all unliquidated entries for which these requirements were not met and to require the importer to post applicable cash deposits equal to the rate noted above.

Opportunity To Request an Administrative Review

Each year during the anniversary month of the publication of an AD or CVD order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Act, may request, in accordance with 19 CFR 351.213, that Commerce conduct an administrative review of that AD or CVD order, finding, or suspended investigation. An interested party who would like Commerce to conduct an administrative review should wait until Commerce announces via the **Federal Register** the next opportunity during the anniversary month of the publication of the *Order* to submit such requests. The anniversary month for this *Order* is August.

Administrative Protective Order

This notice will serve as the only reminder to all parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(2).

Dated: July 5, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary

¹⁰ See *Preliminary Determination PDM* at the “Application of Facts Available and Use of Adverse Inferences” section; see also, e.g., *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 63 FR 18364, 18366 (April 15, 1998), unchanged in *Anti-Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672, 54675–76 (October 13, 1998).

- II. Background
 III. Scope of the Order
 IV. Merchandise Subject to the Circumvention Inquiry
 V. Period of Circumvention Inquiry
 VI. Discussion of the Issues
 Comment 1: Retroactive Suspension of Liquidation and Cash Deposit Requirement
 Comment 2: Including Imports of R-410B in Administrative Reviews or Scope Inquiries
 Comment 3: Commerce's Affirmative Preliminary Determination Is Contrary to Law
 Comment 4: Commerce Should Amend Its Certification Requirements
 Comment 5: Commerce Should Continue to Find that ICE Sogutma Sanayi Ve Ticaret Ltd. (ICE Sogutma), SAM Gas Turkey Endustri Gazlari Anonim Sikreti (SAM Gas), and IGas Holdings, Inc. (IGas) Have Not Circumvented the Order
 VII. Recommendation

Appendix II

Importer Certification

I hereby certify that:

A. My name is {IMPORTING COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF IMPORTING COMPANY}, located at {ADDRESS OF IMPORTING COMPANY}.

B. I have direct personal knowledge of the facts regarding the importation into the Customs territory of the United States of the hydrofluorocarbon (HFC) blend R-410B produced in Türkiye that entered under the entry number(s) identified below, and which is covered by this certification. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, the importer should have direct personal knowledge of the importation of the product, including the exporter's and/or foreign seller's identity and location.

C. If the importer is acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

The R-410B covered by this certification was imported by {IMPORTING COMPANY} on behalf of {U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER};

If the importer is not acting on behalf of the first U.S. customer, include the following sentence as paragraph C of this certification:

{NAME OF IMPORTING COMPANY} is not acting on behalf of the first U.S. customer.

D. The R-410B covered by this certification was shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM THE MERCHANDISE WAS FIRST SHIPPED} located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED}.

E. Select appropriate statement below:

___ The R-410B covered by this certification does not contain HFC components produced in the People's Republic of China (China).

___ I have direct personal knowledge of the facts regarding the end use of the imported product because my company is the end user of the imported product covered by this certification and I certify that the

imported R-410B from Türkiye will not be used to produce subject merchandise. "Direct personal knowledge" includes information contained within my company's books and records.

___ I do not have personal knowledge of the facts regarding the end use of the imported product because my company is not the end user of the imported product covered by this certification. However, I have been able to contact the end user of the imported product and confirm that it will not use this product to produce subject merchandise. The end user of the imported product is {COMPANY NAME} located at {ADDRESS}. "Personal knowledge" includes facts obtained from another party (e.g., correspondence received by the importer from the end user of the product).

F. The imported R-410B covered by this certification will not be further processed into in-scope HFC blends in the United States.

G. This certification applies to the following entries (repeat this block as many times as necessary):

Entry Summary #:

Entry Summary Line Item #:

Foreign Seller:

Foreign Seller's Address:

Foreign Seller's Invoice #:

Foreign Seller's Invoice Line Item #:

Country of Origin of HFC Components:

Producer:

Producer's Address:

H. I understand that {NAME OF IMPORTING COMPANY} is required to maintain a copy of this certification and sufficient documentation supporting this certification (i.e., documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, chemical testing specifications, production records, invoices, etc.) for the later of: (1) the date that is five years after the date of the latest entry covered by the certification; or (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries.

I. I understand that {IMPORTING COMPANY} is required to submit a copy of the importer and exporter certifications as part of the entry summary by uploading them into the document imaging system (DIS) in ACE, and to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with the importer certification, and any supporting documentation, and a copy of the exporter's certification, and any supporting documentation provided to the importer by the exporter, upon request of either agency;

J. I understand that the claims made herein, and the substantiating documentation, are subject to verification by CBP and/or Commerce.

K. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all entries to which this certification applies are within the scope of the antidumping duty (AD) order on HFC

blends from China. I understand that such finding will result in:

(i) suspension of liquidation of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;

(ii) the requirement that the importer post applicable antidumping duty cash deposits (as appropriate) equal to the rates determined by Commerce; and

(iii) the importer no longer being allowed to participate in the certification process.

L. I understand that agents of the importer, such as brokers, are not permitted to make this certification.

M. This certification was completed by the time of filing the entry summary, if the entry date is more than 14 days after the publication of Commerce's preliminary determination of circumvention in the **Federal Register**, or within 45 days of the date on which Commerce published its notice of preliminary determination of circumvention in the **Federal Register**.

N. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make materially false statements to the U.S. government.

Signature

{NAME OF COMPANY OFFICIAL}

{TITLE OF COMPANY OFFICIAL}

{DATE}

Exporter Certification

The party that made the sale to the United States should fill out the exporter certification.

I hereby certify that:

A. My name is {COMPANY OFFICIAL'S NAME} and I am an official of {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES}; located at {ADDRESS OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES};

B. I have direct personal knowledge of the facts regarding the production and exportation of the hydrofluorocarbon (HFC) blend R-410B for which sales are identified below. "Direct personal knowledge" refers to facts the certifying party is expected to have in its own records. For example, an exporter should have direct personal knowledge of the producer's identity and location.

C. The R-410B, and the individual components thereof, covered by this certification was shipped to {NAME OF PARTY IN THE UNITED STATES TO WHOM MERCHANDISE WAS FIRST SHIPPED}, located at {U.S. ADDRESS TO WHICH MERCHANDISE WAS SHIPPED};

D. The R-410B produced in Türkiye does not contain HFC components (i.e., R-32 and R-125) produced in the People's Republic of China (China), regardless of whether sourced directly from a Chinese producer or from a downstream supplier;

E. This certification applies to the following sales to {NAME OF U.S. CUSTOMER}, located at {ADDRESS OF U.S. CUSTOMER} (repeat this block as many times as necessary):

Foreign Seller's Invoice # to U.S. Customer:

Foreign Seller's Invoice to U.S. Customer

Line item #:

Producer Name:
 Producer's Address:
 Producer's Invoice # to Foreign Seller: *(If the foreign seller and the producer are the same party, put NA here.)*
 Name of Producer of HFC Components:
 Location (Country) of Producer of HFC Components:

{NAME OF COMPANY OFFICIAL}
 {TITLE OF COMPANY OFFICIAL}
 {DATE}
 [FR Doc. 2024–15262 Filed 7–10–24; 8:45 am]
BILLING CODE 3510–DS–P

771(9)(C) of the Act as U.S. producers of domestic like product.

On March 29, 2024, the domestic interested parties filed adequate substantive responses within the deadline specified in 19 CFR 351.218(d)(3)(i).⁴ Commerce did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *Orders*.

Scope of the Orders

Italy (A–475–818)

The merchandise subject to the order is pasta. The product is currently classified under subheadings 1901.90.9095 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). The full scope language can be found in the Issues and Decision Memorandum.⁵

Türkiye (A–489–805)

The merchandise subject to the order is pasta. The product is currently classified under subheading 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). The full scope language can be found in the Issues and Decision Memorandum.⁶

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Orders* and the magnitude of the margins of dumping likely to prevail if the *Orders* were to be revoked, is provided in the Issues and Decision Memorandum.⁷ A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly

F. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} required to maintain a copy of this certification and sufficient documentation supporting this certification (*i.e.*, documents maintained in the normal course of business, or documents obtained by the certifying party, for example, product data sheets, chemical testing specifications, productions records, invoices, *etc.*) for the later of: (1) the date that is five years after the latest date of the entries covered by the certification; or (2) the date that is three years after the conclusion of any litigation in the United States courts regarding such entries;

G. I understand that {NAME OF FOREIGN COMPANY THAT MADE THE SALE TO THE UNITED STATES} is required to provide the U.S. importer with a copy of this certification and is required to provide U.S. Customs and Border Protection (CBP) and/or the U.S. Department of Commerce (Commerce) with this certification, and any supporting documents, upon request of either agency;

H. I understand that the claims made herein, and the substantiating documentation are subject to verification by CBP and/or Commerce;

I. I understand that failure to maintain the required certification and supporting documentation, or failure to substantiate the claims made herein, or not allowing CBP and/or Commerce to verify the claims made herein, may result in a *de facto* determination that all sales to which this certification applies are within the scope of the antidumping duty order on HFC blends from China. I understand that such a finding will result in:

- (i) suspension of all unliquidated entries (and entries for which liquidation has not become final) for which these requirements were not met;
- (ii) the importer being required to post the cash deposits determined by Commerce; and
- (iii) the seller/exporter no longer being allowed to participate in the certification process.

J. I understand that agents of the seller/exporter, such as freight forwarding companies or brokers, are not permitted to make this certification.

K. This certification was completed at the time of shipment, if the entry date is more than 14 days after the publication of Commerce's preliminary determination of circumvention in the **Federal Register**, or within 45 days of the date on which Commerce published its preliminary determination of circumvention in the **Federal Register**.

L. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. government.

Signature

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818, A–489–805]

Certain Pasta From Italy and Türkiye: Final Results of Expedited Fifth Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of these sunset reviews, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty orders on certain pasta (pasta) from Italy and Türkiye would likely lead to the continuation or recurrence of dumping at the levels indicated in the “Final Results of Review” section of this notice.

DATES: Applicable July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Erin Kearney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; (202) 482–0167.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2024, Commerce published the notice of initiation of the fifth sunset reviews of the *Orders*,¹ pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On March 14, 2024, Commerce received a notice of intent to participate in the sunset reviews from the following domestic interested parties: 8th Avenue Food & Provisions, Inc., Philadelphia Macaroni Company, and Winland Foods, Inc. (collectively, the domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The domestic interested parties claimed interested party status under section

¹ See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 38547 (July 24, 1996) (*Italy Order*); see also *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 38545 (July 24, 1996) (*Türkiye Order*) (collectively, *the Orders*).

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 15139 (March 1, 2024) (*Initiation Notice*).

³ See Domestic Interested Parties' Letter, “Notice of Intent to Participate,” dated March 14, 2024.

⁴ See Domestic Interested Parties' Letter, “Domestic IPs Substantive Response,” dated March 29, 2024 (Substantive Response).

⁵ See Memorandum, “Decision Memorandum for the Final Results of the Expedited Fifth Sunset Reviews of the Antidumping Duty Orders on Certain Pasta from Italy and the Republic of Türkiye,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁶ *Id.*

⁷ *Id.*

at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the margin of dumping likely to prevail would be up to 20.84 percent for Italy and up to 63.29 percent for Türkiye.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: July 1, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. History of the *Orders*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margin of Dumping Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2024–15260 Filed 7–10–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Listening Session Regarding the Regulation and Implementing Practices of the Licensing of Private Remote Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of public listening session.

SUMMARY: The Commercial Remote Sensing Regulatory Affairs (CRSRA) division of the National Oceanic and Atmospheric Administration's (NOAA's) Office of Space Commerce will hold a virtual listening session for the regulated community and the public to provide input on regulations regarding Licensing of Private Remote Sensing Space Systems, and implementing practices. During the session, the regulated community and the public may express their thoughts about any challenges or concerns experienced by the regulated community stakeholders in understanding or meeting the requirements of the regulations. Representatives from CRSRA will be present during the listening session and may ask clarifying questions, but will not discuss or address the merits of any comments provided.

DATES: The public listening session will be held on July 25, 2024, from 2:00 p.m. to 4:00 p.m. Eastern Time.

ADDRESSES: The session will be accessible via GoToWebinar!. Registration is required for all participants and can be found at: <https://register.gotowebinar.com/register/6212511616942256213>. Webinar access instructions will be provided by email following registration. For those wishing to make comments during the listening session, please indicate this preference on the registration form. Participants accessing the webinar are strongly encouraged to log/dial in at 15 minutes prior to the start time.

Written comments summarizing or elaborating upon spoken remarks may be submitted up to 14 days following the conclusion of this listening session. Comments may be submitted electronically via email to space.commerce@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Sarah Brothers, Commercial Remote Sensing Regulatory Affairs, 1401 Constitution Ave. NW, Room 31027,

Washington, DC 20230, sarah.brothers@noaa.gov, (771) 216–4112.

SUPPLEMENTARY INFORMATION: Licenses for the operation of private remote sensing space systems are issued by CRSRA pursuant to 51 U.S.C. 60101 *et seq.* (the Land Remote Sensing Policy Act of 1992). The implementing regulations are at 15 CFR part 960.

The regulations at 15 CFR part 960 were revised in its entirety in 2020, and the new regulations became effective on July 20, 2020. In the approximately four years since the effective date of the new regulations, CRSRA has identified elements of the regulations that, upon implementation, yielded unexpected consequences or high administrative burdens to both CRSRA and the licensee.

CRSRA has also observed trends in the private remote sensing sector that may warrant novel or creative regulatory approaches. For example, CRSRA observed that the Coronavirus Disease 2019 (COVID–19) pandemic, which was declared shortly prior to the release of 15 CFR part 960, accelerated existing trends pertaining to virtual and distributed private remote sensing system operations and the extensive use in system operations of cloud computing resources and infrastructure. Similarly, CRSRA is seeing an increasing number of applications for hosted payloads and, as these activities increase, anticipates unexpected complications will arise therefrom.

The upcoming listening session allows CRSRA to hear from the regulated community and the public regarding insights, challenges, concerns, and recommendations pertaining to the regulations and their implementation, including during pre-application consultation, application and license issuance, license sustainment (*e.g.*, license modification and annual certification periods), and license transfer and termination.

For this listening session, we anticipate hearing from the regulated community and the public about the following topics:

- Challenges or concerns experienced by stakeholders in understanding or meeting the requirements of 15 CFR part 960, the conditions of the license, and the implementation practices followed between pre-application consultation and license transfer or termination;
- Recommendations for regulatory or implementation practice approaches or alternatives that could address any challenges or concerns, or that could continue to streamline 15 CFR part 960; and
- Recommendations to improve 15 CFR part 960 and its implementation to

address existing or emerging business plans or models, concepts of operations, or system configurations, or other trends in the private remote sensing industry.

The public is reminded that CRSRA expects participants of the session to conduct themselves appropriately. At the beginning of the session, the moderator will explain how it will be conducted and how and when registered participants can provide spoken comments. CRSRA will structure the session so that all members of the public who have registered in advance and indicated a preference to speak during registration will be able to comment; it is anticipated that approximately 5 minutes will be allocated to each speaker for comments. Should requests to comment exceed the time allocated, an additional public listening session will be organized and notice provided. Participants are expected to respect the ground rules, and those that do not may be asked to leave.

Richard DalBello,

Director, Office of Space Commerce.

[FR Doc. 2024-15022 Filed 7-10-24; 8:45 am]

BILLING CODE 3511-43-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD834]

Endangered and Threatened Species; Recovery Plan for the Oceanic Whitetip Shark; Notice of Initiation of a 5-Year Review for the Oceanic Whitetip Shark

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

ACTION: Notice of availability; notice of initiation; request for information.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the adoption of an Endangered Species Act (ESA) Recovery Plan for the threatened oceanic whitetip shark (*Carcharhinus longimanus*). The Recovery Plan and associated Recovery Implementation Strategy for this species are now available. We also announce the initiation of a 5-year review for the oceanic whitetip shark. NMFS is required by the ESA to conduct 5-year reviews to ensure that the listing classifications of species are accurate. The 5-year review must be based on the best scientific and commercial data available at the time of the review. We request submission of any such

information on the oceanic whitetip shark, particularly information on the status, threats, and recovery of the species that has become available since it was listed in 2018.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than September 9, 2024.

ADDRESSES: You may submit information on this document, identified by NOAA-NMFS-2024-0043, by the following method:

- **Electronic Submission:** Submit electronic information via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA-NMFS-2024-0043 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Information sent by any other method, to any other address or individual, or received after the end of the specified period, may not be considered by NMFS. All information received is a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive or protected information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous submissions (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the Recovery Plan and Recovery Implementation Strategy are available on the NMFS website at <https://www.fisheries.noaa.gov/species/oceanic-whitetip-shark/conservation-management>.

FOR FURTHER INFORMATION CONTACT: Kristen Koyama, (301) 427-8456, kristen.koyama@noaa.gov.

SUPPLEMENTARY INFORMATION:

The Recovery Plan

The ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we develop and implement recovery plans for the conservation and survival of threatened and endangered species under our jurisdiction, unless it is determined that such plans would not promote the conservation of the species. We listed the oceanic whitetip shark (*Carcharhinus longimanus*) as a threatened species under the ESA on January 30, 2018 (83 FR 4153). We published a Notice of Availability of the Draft Recovery Plan in the **Federal Register** on January 25, 2023 (88 FR 4817) to obtain public comments on the Draft Plan. We revised the Draft Plan

based on the comment submissions received, along with peer review comments, and the revised version now constitutes the final Recovery Plan for the oceanic whitetip shark.

Recovery plans help identify and guide recovery needs for species listed under the ESA. Section 4(f)(1) of the ESA requires that recovery plans include, to the maximum extent practicable: (1) site-specific management actions necessary to achieve the plan’s goal for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in a determination that the species be removed from the list; and (3) estimates of the time required and cost to carry out those measures needed to achieve the recovery plan’s goal.

The Recovery Plan addresses the recovery planning requirements of the ESA for the oceanic whitetip shark. It presents a recovery strategy based on the biological and ecological needs of the species, current threats, and existing conservation measures, all of which affect its long-term viability. The overall strategy to recover the oceanic whitetip shark is to minimize fishing mortality, the primary threat to the species, through a two-pronged approach: (1) reducing the frequency of fishing interactions, and (2) increasing survivorship before, during, and after interactions with fishing gear occur. Given the oceanic whitetip shark’s range is largely outside of U.S. jurisdiction, the recovery strategy includes international cooperation through Regional Fisheries Management Organizations (RFMOs) and other international partners. The Recovery Plan identifies three recovery objectives that, collectively, describe the conditions necessary to achieve recovery: (1) Ensure the oceanic whitetip shark maintains resiliency and geographic representation, and is a functional component of the ecosystem, by increasing overall abundance to achieve viable populations in all ocean basins; (2) Increase oceanic whitetip shark resiliency by managing or eliminating significant anthropogenic threats; and (3) Ensure the continued viability of the oceanic whitetip shark through development and effective implementation of regulatory mechanisms for the long-term protection of the species. The Recovery Plan includes demographic and threats-based recovery criteria that can be used to help determine when a stable and sustainable population size has been reached and that threats from bycatch-related mortality in commercial fisheries, international trade of its fins,

and inadequate regulatory mechanisms have been minimized, managed, or eliminated such that they are not contributing to the species being in danger of extinction within the foreseeable future. The Recovery Plan identifies recovery actions needed to improve knowledge and understanding of oceanic whitetip shark population dynamics, reduce fisheries bycatch and mortality, address impacts from international trade, improve monitoring and reporting of fisheries interactions with oceanic whitetip sharks, implement and enforce regulatory mechanisms, and increase public and stakeholder awareness through education and outreach strategies. Collectively, the objectives, recovery criteria, and recovery actions represent NMFS' expectations of conditions to recover the oceanic whitetip shark so the species may be removed from the list.

The Recovery Plan is accompanied by the Recovery Implementation Strategy, which is a flexible, operational document that provides specific, prioritized activities necessary to fully implement recovery actions in the plan. The activities in the Recovery Implementation Strategy may be modified to reflect changes in the information available as well as progress towards recovery. If/when the science indicates that meaningful changes to the recovery actions and criteria are necessary, the Recovery Plan will be revised and a revised draft will be made available for public comment before being finalized.

How NMFS and Others Expect To Use the Recovery Plan

With adoption of this Recovery Plan, we will seek to implement the actions and activities for which we have authority and funding; encourage other Federal, state, and local agencies to implement recovery actions and activities for which they have responsibility, authority, and funding; and work cooperatively with other partners and the public on implementation of other actions and activities. We expect the Recovery Plan to guide us and other Federal agencies in evaluating Federal actions under ESA section 7, as well as in implementing other provisions of the ESA, such as considering permits under section 10, and other statutes.

When we are evaluating the species' status in the future, such as during a 5-year review as required by section 4(c)(2) of the ESA, the agency will examine whether the ESA section 4(a)(1) listing factors have been addressed. To assist in this examination,

we will also evaluate the delisting criteria described in the Recovery Plan, which include both demographic-based criteria and threats-based criteria addressing each of the ESA section 4(a)(1) listing factors, as well as any other relevant data and policy considerations.

Initiation of a 5-Year Review for the Oceanic Whitetip Shark and Public Solicitation of New Information

Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every 5 years. This will be the first review of this species pursuant to this provision of the ESA since it was listed in 2018 under the ESA. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species currently under active review. On the basis of such reviews, we determine under section 4(c)(2)(B) whether any species should be removed from the list (*i.e.*, delisted) or reclassified from endangered to threatened or from threatened to endangered (16 U.S.C. 1533(c)(2)(B)). As described by the regulations in 50 CFR 424.11(e), the Secretary shall delist a species if the Secretary determines based on consideration of the factors and standards set forth in paragraph (c) of that section, that the best scientific and commercial data available substantiate that: (1) the species is extinct; (2) the species has recovered to the point at which it no longer meets the definition of an endangered species or a threatened species; (3) new information that has become available since the original listing decision shows the listed entity does not meet the definition of an endangered species or a threatened species; or (4) new information that has become available since the original listing decision shows the listed entity does not meet the definition of a species. Any change in Federal classification would require a separate rulemaking process.

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the oceanic whitetip shark (*C. longimanus*). Categories of requested information include: (1) species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and important

features for conservation; (3) status and trends of threats to the species and its habitats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; and (5) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes and improved analytical methods for evaluating extinction risk.

If you wish to provide information for the review, you may submit your information and materials electronically (see **ADDRESSES** section). We request that all information be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications.

Conclusion

NMFS concludes that the Recovery Plan meets the requirements of the ESA section 4(f) and is therefore adopting it as the final Recovery Plan for the oceanic whitetip shark.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 5, 2024.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024-15186 Filed 7-10-24; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11143-022]

Glen Falls Hydro, LLC; Notice of Proposed Termination of License by Implied Surrender and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric proceeding has been initiated by the Commission and is available for public inspection:

a. *Type of Proceeding:* Proposed Termination of License by Implied Surrender.

b. *Project No.:* 11143-022.

c. *Date Initiated:* July 3, 2024.

d. *Applicant:* Glen Falls Hydro, LLC.

e. *Name of Project:* Glen Falls Hydroelectric Project.

f. *Location:* The project is located on the Moosup River, near Plainfield, Windham County, Connecticut. The project does not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR 6.4.

h. *Applicant Contact:* John Gauvin, Glen Falls Hydro, LLC, 340 Prospect

Street, Moosup, CT 06354, (860) 564-7786.

i. *FERC Contact:* Maryam Akhavan, (202) 502-6110, maryam.akhavan@ferc.gov.

j. *Resource Agency Comments:* Federal, state, local and Tribal agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

k. *Deadline for filing comments, motions to intervene, and protests:* August 19, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P-11143-022. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project Facilities:* The project works include: a 150-foot-long granite masonry gravity overflow dam, a 43-acre reservoir with a surface elevation of 270.7 feet mean sea level and a gross storage capacity of 215 acre-feet, a set of 20-foot-long and 15-foot-wide trashracks, a 70-foot-long and 7-foot diameter penstock, an 18.9-foot-wide and 23.2-foot-long concrete

powerhouse containing one turbine-generating unit having a total installed capacity of 250 kilowatts (kW), a 35-foot-long and 18-foot-wide tailrace, a 135-foot-long transmission line and appurtenant facilities. The project has not operated since it was damaged by a storm in March 2010.

m. *Description of Proceeding:* The licensee has not complied with Standard Article 16 of the license which was issued on March 2, 1992 (58 FERC 62,169). Article 16 states that if the licensee abandons or discontinues good faith operation of the project or refuses or neglects to comply with the terms of the license and the lawful orders of the Commission, the Commission will deem it to be the intent of the licensee to surrender the license.

Commission staff issued a letter, on October 20, 2023, followed by a second letter on December 28, 2023, requesting a plan and schedule to resume project operation or surrender of the license. Commission staff shared a copy of the December 28, 2023 letter with the licensee's widow, as the licensee had passed away. On February 5, 2024, the widow informed Commission staff via email that she is not capable of rebuilding the hydroelectric project and agreed to an implied surrender of the project license following her husband's passing and that it is not possible for her to file a surrender application.

n. *Location of the Order Issuing License:* The order may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or

motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

r. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-15192 Filed 7-10-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24-891-000.
Applicants: Tres Palacios Gas Storage LLC.

Description: 4(d) Rate Filing: TPGS Rate Schedule and FOSA Updates eff 8-2-24 to be effective 8/2/2024.

Filed Date: 7/2/24.
Accession Number: 20240702-5178.
Comment Date: 5 p.m. ET 7/15/24.
Docket Numbers: RP24-892-000.

Applicants: Mountain Valley Pipeline, LLC.

Description: 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—7/2/2024 to be effective 7/2/2024.

Filed Date: 7/2/24.

Accession Number: 20240702–5181.

Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: RP24–893–000.

Applicants: Equitrans, L.P.

Description: 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements—7/2/2024 to be effective 7/2/2024.

Filed Date: 7/2/24.

Accession Number: 20240702–5188.

Comment Date: 5 p.m. ET 7/15/24.

Docket Numbers: RP24–894–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: 4(d) Rate Filing: Negotiated Rates—Various Releases eff 7–4–24 to be effective 7/4/2024.

Filed Date: 7/3/24.

Accession Number: 20240703–5081.

Comment Date: 5 p.m. ET 7/15/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR24–72–001.

Applicants: Cranberry Pipeline Corporation.

Description: 284.123(g) Rate Filing: Cranberry Pipel to be effective 5/20/2024.

Filed Date: 7/3/24.

Accession Number: 20240703–5033.

Comment Date: 5 p.m. ET 7/24/24.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: July 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–15193 Filed 7–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC24–107–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Filing

Take notice that on July 1, 2024, Transcontinental Gas Pipe Line Company, LLC (Transco) submitted a request to the Chief Accountant of the Federal Energy Regulatory Commission (Commission or FERC) seeking guidance on whether Transco can separately calculate its weighted average cost of gas associated with its system inventory related to System Shippers and system inventory related to Cash-Out under its Operational Balancing Agreements. We note that as part of an uncontested Stipulation and Agreement in Docket Nos. RP20–614–007 and RP20–618–003, Transco was directed to file a request with the Commission's Chief Accountant seeking guidance on this matter.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not

necessary to serve motions to intervene or protests on persons other than the Applicant.

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://ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy which must reference the Project docket number.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

Comment Date: 5:00 p.m. Eastern Time on July 22, 2024.

Dated: July 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–15190 Filed 7–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–98–000.

Applicants: UGI Development Company, Hunlock Energy, LLC, UGI Energy Services, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of UGI Energy Services, LLC, et al.

Filed Date: 7/1/24.

Accession Number: 20240701–5457.

Comment Date: 5 p.m. ET 7/22/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–218–000.

Applicants: Shamrock Energy Storage, LLC.

Description: Shamrock Energy Storage, LLC submits Notice of Self-

Certification of Exempt Wholesale Generator Status.

Filed Date: 7/2/24.

Accession Number: 20240702–5204.

Comment Date: 5 p.m. ET 7/23/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1521–016; ER10–1520–016; ER10–1522–010; ER20–2493–011.

Applicants: OTCF, LLC, Occidental Chemical Corporation, Occidental Power Services, Inc., Occidental Power Marketing, L.P.

Description: Triennial Market Power Analysis for Central Region of Occidental Power Marketing, L.P., et al.
Filed Date: 7/1/24.

Accession Number: 20240701–5456.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER10–2818–009; ER10–2806–009; ER13–2386–010.

Applicants: Lakeswind Power Partners, LLC, TransAlta Energy Marketing (U.S.) Inc., TransAlta Energy Marketing Corporation.

Description: Triennial Market Power Analysis for Central Region of TransAlta Energy Marketing Corporation, et al.
Filed Date: 6/28/24.

Accession Number: 20240628–5401.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER11–2105–006.

Applicants: Oklahoma Gas and Electric Company.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of Oklahoma Gas and Electric Company.
Filed Date: 6/28/24.

Accession Number: 20240628–5398.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER13–738–012; ER10–1186–015; ER20–392–002; ER11–3097–016; ER20–393–002; ER23–1279–002.

Applicants: DTE Energy Services, Inc., DTE Garden Wind Farm, LLC, DTE Energy Trading, Inc., DTE Stony Corners Wind Farm, LLC, DTE Energy Supply, LLC, DTE Electric Company.

Description: Triennial Market Power Analysis for Central Region of DTE Electric Company, et al.
Filed Date: 6/28/24.

Accession Number: 20240628–5397.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER17–1931–009; ER14–868–007; ER20–649–006; ER14–867–006; ER14–594–020; ER17–1930–009; ER17–1932–009.

Applicants: Southwestern Electric Power Company, Public Service Company of Oklahoma, Ohio Power Company, AEP Energy, Inc., AEP Energy Partners, Inc., AEP Retail Energy Partners, AEP Texas Inc.

Description: Triennial Market Power Analysis for Southwest Power Pool Inc. Region of AEP Texas Inc., et al.

Filed Date: 6/28/24.

Accession Number: 20240628–5402.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER19–1074–017; ER10–1427–011; ER12–645–029; ER19–529–017; ER19–1075–017; ER20–1806–007; ER22–192–009; ER22–1010–008; ER22–1883–005; ER23–2203–004; ER24–443–003.

Applicants: Deriva Energy Services, LLC, Wildflower Solar, LLC, Ledyard Windpower, LLC, TerraForm IWG Acquisition Holdings II, LLC, Evolugen Trading and Marketing LP, Catalyst Old River Hydroelectric Limited Partnership, Brookfield Renewable Energy Marketing US LLC, Brookfield Renewable Trading and Marketing LP, California Ridge Wind Energy LLC, Brookfield Energy Marketing LP, Brookfield Energy Marketing Inc.

Description: Triennial Market Power Analysis for Central Region of Brookfield Energy Marketing Inc., et al.
Filed Date: 6/28/24.

Accession Number: 20240628–5400.

Comment Date: 5 pm ET 8/27/24.

Docket Numbers: ER21–1755–009; ER23–1642–006; ER14–2498–017; ER14–2500–017.

Applicants: Newark Energy Center, LLC, EIF Newark, LLC, Stored Solar J&WE, LLC, Hartree Partners, LP.

Description: Triennial Market Power Analysis for Central Region of Hartree Partners, LP, et al.
Filed Date: 7/1/24.

Accession Number: 20240701–5461.

Comment Date: 5 p.m. ET 8/30/24.

Docket Numbers: ER23–52–003; ER23–277–003; ER23–1512–001.
Applicants: Westlake Natrium LLC, Westlake US 2 LLC, Westlake Chemicals & Vinyls LLC.

Description: Triennial Market Power Analysis for Central Region of Westlake Chemicals & Vinyls LLC, et al.
Filed Date: 6/28/24.

Accession Number: 20240628–5396.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER23–1846–004; ER11–4044–034; ER11–4046–033; ER21–2715–007; ER21–2716–007; ER23–2726–002; ER24–1576–002; ER24–1711–002.

Applicants: Split Rail Solar Energy LLC, Maple Flats Solar Energy Center LLC, Walnut Bend Solar LLC, Fairbanks Solar Holdings LLC, Fairbanks Solar Energy Center LLC, Gratiot County Wind II LLC, Gratiot County Wind LLC, Boomtown Solar Energy LLC.

Description: Triennial Market Power Analysis for Central Region of Boomtown Solar Energy LLC, et al.

Filed Date: 6/28/24.

Accession Number: 20240628–5404.

Comment Date: 5 p.m. ET 8/27/24.

Docket Numbers: ER24–2456–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original WMPA No. 7298, AF2–077 to be effective 6/4/2024.

Filed Date: 7/3/24.

Accession Number: 20240703–5042.

Comment Date: 5 p.m. ET 7/24/24.

Docket Numbers: ER24–2457–000.

Applicants: AEP Texas Inc.

Description: 205(d) Rate Filing: AEPTX–LCRA TSC (Rio Pecos) Facilities Development Agreement to be effective 6/18/2024.

Filed Date: 7/3/24.

Accession Number: 20240703–5049.

Comment Date: 5 p.m. ET 7/24/24.

Docket Numbers: ER24–2458–000.

Applicants: AEP Texas Inc.

Description: Tariff Amendment: AEPTX–Oncor (Carbon) Facilities Development Agreement Cancellation to be effective 9/2/2024.

Filed Date: 7/3/24.

Accession Number: 20240703–5061.

Comment Date: 5 p.m. ET 7/24/24.

Docket Numbers: ER24–2459–000.

Applicants: Tenaska Virginia Partners, L.P.

Description: Compliance filing: Informational Filing Regarding Upstream Transfer of Ownership to be effective 7/4/2024.

Filed Date: 7/3/24.

Accession Number: 20240703–5078.

Comment Date: 5 p.m. ET 7/24/24.

Docket Numbers: ER24–2460–000.

Applicants: Idaho Power Company.

Description: 205(d) Rate Filing: IPC/Powerex Transmission Service Agreements Nos. 532–535 to be effective 12/31/9998.

Filed Date: 7/3/24.

Accession Number: 20240703–5086.

Comment Date: 5 p.m. ET 7/24/24.

Docket Numbers: ER24–2461–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original GIA, Service Agreement No. 7302; AF1–272 to be effective 6/3/2024.

Filed Date: 7/3/24.

Accession Number: 20240703–5087.

Comment Date: 5 p.m. ET 7/24/24.

Docket Numbers: ER24–2462–000.

Applicants: Versant Power.

Description: Versant Power submits Petition for Partial Waiver of Order No. 1920.

Filed Date: 7/2/24.

Accession Number: 20240702–5233.

Comment Date: 5 p.m. ET 7/23/24.

Docket Numbers: ER24–2464–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): SR Lincoln (Lincoln Solar) LGIA Filing to be effective 6/21/2024.

Filed Date: 7/3/24.

Accession Number: 20240703–5103.

Comment Date: 5 p.m. ET 7/24/24.

Docket Numbers: ER24–2465–000.

Applicants: Public Service Company of New Mexico.

Description: 205(d) Rate Filing: Large Generator Interconnection Agreements to be effective 9/2/2024.

Filed Date: 7/3/24.

Accession Number: 20240703–5128.

Comment Date: 5 p.m. ET 7/24/24.

Docket Numbers: ER24–2466–000.

Applicants: NorthWestern Corporation.

Description: 205(d) Rate Filing: RS 336 Certificate of Concurrence to Dynamic Transfer BA to be effective 7/2/2024.

Filed Date: 7/3/24.

Accession Number: 20240703–5145.

Comment Date: 5 p.m. ET 7/24/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

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Dated: July 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–15191 Filed 7–10–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2024–0057; FRL–11683–05–OCSPP]

Certain New Chemicals; Receipt and Status Information for May 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 5/01/2024 to 5/31/2024.

DATES: Comments identified by the specific case number provided in this document must be received on or before August 12, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0057, through the *Federal eRulemaking Portal* at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (MC 7407M), Office

of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: rahai.jim@epa.gov.

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 5/01/2024 to 5/31/2024. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, a chemical substance may be either an “existing” chemical substance or a “new” chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a “new chemical substance,” while a chemical substance that is listed on the TSCA Inventory is classified as an “existing chemical substance.” (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: <https://www.epa.gov/inventory>.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA

has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for “test marketing” purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <https://www.epa.gov/chemicals-under-tsca>.

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending, or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL-4942-7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the

section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA’s determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.*, domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter “A” (*e.g.*, P-18-1234A). The version column designates submissions in sequence as “1”, “2”, “3”, etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 5/01/2024 TO 5/31/2024

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J-24-0005	1	04/23/2024	Cargill, Incorporated	(G) Production of biofuel ..	(G) Biofuel-producing modified microorganism(s), with chromosomally borne modifications.
J-24-0006	1	04/23/2024	Cargill, Incorporated	(G) Production of biofuel ..	(G) Biofuel-producing modified microorganism(s), with chromosomally borne modifications.
J-24-0007	1	04/23/2024	Cargill, Incorporated	(G) Production of biofuel ..	(G) Biofuel-producing modified microorganism(s), with chromosomally borne modifications.
J-24-0008	1	04/23/2024	Cargill, Incorporated	(G) Production of biofuel ..	(G) Biofuel-producing modified microorganism(s), with chromosomally borne modifications.
P-20-0144A	6	05/08/2024	CBI	(G) Asphalt emulsion applications.	(S) Fatty acids, soya, reaction products with polyethylenepolyamines.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 5/01/2024 TO 5/31/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-21-0165	1	05/02/2024	Colonial Chemical, Inc	(S) Anionic surfactant in cleaning products.	(S) D-Glucopyranose, oligomeric, C10–16-alkyl glycosides, 3-(3,4-dicarboxy-3-hydroxy-1-oxobutoxy)-2-hydroxypropyl ethers, sodium salts.
P-23-0084	1	05/02/2024	Colonial Chemical, Inc	(S) Institutional cleaning products, hard surface cleaners, and cleaning in place applications.	(G) Amides, vegetable oil, hydroxylated amine.
P-23-0085	1	05/02/2024	Colonial Chemical, Inc	(S) Institutional cleaning products, hard surface cleaners, and cleaning in place applications.	(G) Amides, soya, hydroxylated amine.
P-23-0173A	2	05/10/2024	CBI	(G) Component used in battery manufacturing.	(G) Cellulose, alkoxyalkyl ether, alkali metal salt.
P-23-0173A	3	05/28/2024	CBI	(G) Component used in battery manufacturing.	(G) Cellulose, alkoxyalkyl ether, alkali metal salt.
P-23-0174A	10	05/28/2024	CBI	(G) Component used in battery manufacturing.	(G) Mixed metal oxide.
P-24-0027	5	05/29/2024	Mikros Biochem	(S) Surfactant for cleaners	(S) Fatty acids, C8–14, 2,3-diesters with rel-(2R, 3S)-2,3,4-trihydroxybutyl Beta-D-mannopyranoside acetate.
P-24-0092	1	05/02/2024	Colonial Chemical, Inc	(S) Institutional cleaning products, hard surface cleaners, and cleaning in place applications.	(G) Fatty acid reaction products with diisopropanolamine.
P-24-0111A	3	05/24/2024	CBI	(S) Hardener for use in paints, coatings, and adhesives.	(G) Formaldehyde, polymer with aminoalkyl-(aminoalkyl)amino(alkyl)-alkaneamine, alkanediylbis(oxyalkylene)(oxirane), 4,4'-(1-methylethylidene)bis[phenol] and 2,2'-[[1-methylethylidene)bis(4,1-phenyleneoxymethylene)]bis[oxirane], modified with (aminoalkyl)amino(alkyl)amino-phenoxy-alkanol and alkyl modified-ether, salts.
P-24-0113A	3	05/08/2024	CBI	(S) Adhesion and curing agent for use in paints and adhesives.	(G) Epoxidized D-glucitol.
P-24-0116	2	05/09/2024	CBI	(G) For use in coatings for metal parts.	(G) Phenol, 4,4-(1-alkylidene)bis-, polymer with 2-(chloromethyl)oxirane, 4-alkylphenyl ether, reaction products with alkylpolyamine and 2-(alkylamino)alkanol, hydrolyzed, alkanesulfonates (salts).
P-24-0117	2	05/09/2024	CBI	(G) For use in coatings for metal parts.	(G) Alkanoic acid, compds. with hydrolyzed bisphenol-epichlorohydrin polymer 4-alkylphenyl ether-alkylpolyamine and 2-(alkylamino)alkanol reaction products.
P-24-0118	2	05/09/2024	CBI	(G) For use in coatings for metal parts.	(G) Alkanoic acid, compds. with [(aminoalkyl)imino]bis[alkanol]-bisphenol-epichlorohydrin polymer 4-alkylphenyl ether—2-(alkylamino)alkanol reaction products.
P-24-0119	2	05/09/2024	CBI	(G) For use in coatings for metal parts.	(G) Amidosulfonic acid, compds. with [(aminoalkyl)imino]bis[alkanol]-bisphenol-epichlorohydrin polymer 4-alkylphenyl ether—2-(alkylamino)alkanol reaction products.
P-24-0120	2	05/09/2024	CBI	(G) For use in coatings for metal parts.	(G) Alkanoic acid, compds. with hydrolyzed bisphenol-monoalkylamine-epichlorohydrin polymer 4-alkylphenyl ether-alkylpolyamine and 2-(alkylamino)alkanol reaction products.
P-24-0121	2	05/09/2024	CBI	(G) For use in coatings for metal parts.	(G) Phenol, 4,4-(1-alkylidene)bis-, polymer with 2-(chloromethyl)oxirane and monoalkaneamine, 4-alkylphenyl ether, reaction products with alkylpolyamine and 2-(alkylamino)alkanol, hydrolyzed, alkanesulfonates (salts).
P-24-0127	2	05/14/2024	CBI	(S) Hardener for use in paints, coatings, and adhesives.	(G) Phenol, polymer with bisphenol A, modified bisphenol A, epichlorohydrin, modified phenoxyalkyl and alkylamine, acetate (salt).
P-24-0128	3	05/29/2024	CBI	(S) Chemical intermediate	(G) Tetramethyldisiloxanediybis[propylcarbonyl].
P-24-0130A	2	05/13/2024	CBI	(S) Sulfur Scavenger	(G) Poly(alkoxy)alkanol.
P-24-0133	2	05/02/2024	Wacker Chemical Corporation.	(G) Thread and textile treatment.	(S) Siloxanes and Silicones, di-Me, hydrogen-terminated, polymers with 1,6-diisocyanatohexane and polyethylene glycol monoallyl ether, N3-[3-(dimethylamino)propyl]-N1,N1-dimethyl-1,3-propanediamine-blocked.
P-24-0135A	3	05/02/2024	ArrMaz Products, Inc	(S) Anti-caking additive	(S) Phosphoric acid, mono- and di-C16-18-alkyl esters.
P-24-0136	3	05/28/2024	CBI	(G) Crosslinking polymer	(G) Siloxanes and Silicones, di-Me, polymers with silicic acid, [(ethyldimethylsilyloxy)]-terminated, reaction products with [(alkoxy)silyl]ethylsiloxane and [(alkoxy)silyl]ethylsiloxane.
P-24-0139	3	05/14/2024	CBI	(G) Automotive refinish coating.	(G) Maleic acid, dibutyl ester, reaction products with isophoronediamine-5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane-trimethylolpropane triacrylate polymer, di-Bu maleate and di-Et maleate.
P-24-0141	2	05/01/2024	CBI	(G) Fuel additive	(G) 2-Propenoic acid, reaction products with alkylamine.
P-24-0142	1	04/21/2024	Samsung SDI America, Inc.	(S) Leveling agent used in semiconductor manufacturing.	(G) 2-alkenoic acid fluorinated ester, polymer with alkyloxirane homopolymer monoether with 1,2-alkanediol, mono-alkenoate, alkylperoxoate initiated.
P-24-0144	2	05/13/2024	CBI	(G) Industrial Raw Material.	(G) Unsaturated carboxylic acid copolymer with 2-Methyl substituted poly(ethylene glycol) diol.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 5/01/2024 TO 5/31/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-24-0145	3	05/14/2024	CBI	(G) Automotive refinsh coating.	(G) 2-Butenedioic acid (2Z)-, 1,4-bis(2-ethylhexyl) ester, reaction products with 5-amino-1,3,3-trimethylcyclohexanemethanamine-hexamethylene diacrylate-isophorone diisocyanate polymer and di-Bu maleate.
P-24-0145A	4	05/24/2024	CBI	(G) Automotive refinsh coating.	(G) 2-Butenedioic acid (2Z)-, 1,4-bis(2-ethylhexyl) ester, reaction products with 5-amino-1,3,3-trimethylcyclohexanemethanamine-hexamethylene diacrylate-isophorone diisocyanate polymer and di-Bu maleate.
P-24-0147	1	05/02/2024	CBI	(G) Component used in drilling operations.	(G) Vinylhalo dialkylester, Vinylhalo dialkylester, Vinylhalo dialkylester.
P-24-0148	1	05/06/2024	CBI	(G) Display Material	(G) Substituted polyphenyl, alkyl-fluoro-alkyl.
P-24-0149	1	05/06/2024	CBI	(G) Display Material	(G) Substituted polyphenyl, alkyl-polyfluoro-alkyl.
P-24-0150	1	05/06/2024	CBI	(G) Display Material	(G) Substituted polyphenyl, alkyl-alkyl-polyfluoro.
P-24-0151	1	05/06/2024	CBI	(G) Display Material	(G) Substituted polyphenyl, alkyl-alkyl-fluoro.
P-24-0152	1	05/08/2024	CBI	(G) Display Material	(G) Phenyl carboxylic acid, alkylcycloalkyl, phenylalkanediyl ester.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned

to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the

type of amendment (e.g., amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCs APPROVED * FROM 5/01/2024 TO 5/31/2024

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P-18-0014	05/01/2024	04/22/2024	N	(G) Sulfonium, triphenyl-, salt with disubstituted-heterocyclic compound (1:1).
P-18-0223	05/16/2024	05/13/2024	N	(S) Heptane, 3,3-bis(methoxymethyl)-2,6-dimethyl-
P-20-0122	05/01/2024	04/22/2024	N	(G) Heterocyclic onium compound with 1-substituted-alkyl 2,2,2-trisubstitutedalkyl 2-methyl-2-propenoate (1:1), polymer with acenaphthylene, 4- ethenyl-a,a-dimethylbenzenemethanol and 4-ethenylphenyl acetate, hydrolyzed.
P-20-0168	05/22/2024	05/17/2024	N	(G) Polyolefin polyamine succinimide, carbopolycycle alkoxyated.
P-22-0030	05/10/2024	05/03/2024	N	(G) Polyester with 1,4-benzenedicarboxylic acid, 2,2-dimethyl-1,3-propanediol, dodecanedioic acid, 1,2-ethanediol, aliphatic polyester, 3-hydroxy-2,2-dimethylpropyl 3-hydroxy-2,2-dimethylpropanoate, 1,3-isobenzofurandione and 1,1'-methylenebis[4-isocyanatobenzene].
P-22-0080	05/03/2024	04/05/2024	N	(S) Poly(oxy-1,2-ethanediyl), -(iminodi-2,1-ethanediyl)bis[-(2-aminoethoxy)-].
P-22-0080	05/03/2024	04/05/2024	N	(S) Poly(oxy-1,2-ethanediyl), -(2-aminoethyl)-(2-aminoethoxy)-.
P-22-0086	05/02/2024	04/09/2024	N	(G) Phenoxathiinium, 10-phenyl-, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri-carbopolycycle, hetero-acid)benzenesulfonate (1:1).
P-22-0131	05/10/2024	05/09/2024	N	(S) Maltodextrin, hexadecanoate.
P-22-0132	05/10/2024	05/09/2024	N	(S) Maltodextrin, decanoate.
P-22-0133	05/10/2024	05/09/2024	N	(S) Maltodextrin, octadecanoate.
P-22-0139	05/02/2024	04/20/2024	N	(G) Dialkylhydroxylamine.
P-22-0157	05/28/2024	05/28/2024	N	(S) 1,2-ethanediamine, n,n-dimethyl-n-(1-methylethyl)-n-[2-[methyl(1-methylethyl)amino]ethyl]-.
P-23-0061	05/22/2024	04/25/2024	N	(G) Alkanoic acid, substituted, polymer with substituted alkanic acid, from fermentation of fermentable sugars.
P-23-0104	05/16/2024	04/17/2024	N	(G) Sulfonium, carbomonocycle bis[(trihaloalkyl)carbomonocycle], disubstituted carbomonocyclic ester.
P-23-0176	05/16/2024	04/17/2024	N	(G) Sulfonium, bis(dihalo carbomonocycle)carbomonocycle-, salt with dihalo-sulfoalkyl trisubstituted benzoate

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has

been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the

type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 5/01/2024 TO 5/31/2024

Case No.	Received date	Type of test Information	Chemical substance
L-23-0189	05/16/2024	Air Monitoring Test Data	(S) 1-propene, 3,3-diethoxy-
L-24-0004	05/21/2024	Allyl Chlorid PEL TWA & STEL Monitoring Test Data	(G) 3-alkene, 1-chloro-, (3Z)-.

TABLE III—TEST INFORMATION RECEIVED FROM 5/01/2024 TO 5/31/2024—Continued

Case No.	Received date	Type of test Information	Chemical substance
LM-24-0003	05/04/2024	Algal Toxicity (OECD Test Guideline 201); Freshwater and Saltwater Fish Acute Toxicity Test (OECD Test Guideline 203); Bacterial Reverse Mutation Test (OECD Test Guideline 471); Aquatic Invertebrate Acute Toxicity Test, Freshwater Daphnids (OECD Test Guideline 202).	(G) Urea, (dialkylsubstituted)alkyl-, polymer with polyether dialkanesalt.
P-07-0087	05/28/2024	Analytical Data for Consent Order	(G) Partially fluorinated condensation polymer.
P-08-0200	05/28/2024	Analytical Data for Consent Order	(G) Partially fluorinated amphiphilic condensation polymer.
P-08-0643	05/28/2024	Analytical Data for Consent Order	(G) Fluorinated acrylic copolymer.
P-08-0748	05/24/2024	Analytical Data for Consent Order	(G) Fluorinated acrylic copolymer.
P-09-0245	05/28/2024	Analytical Data for Consent Order	(G) Partially fluorinated alcohol, reaction products with phosphorus oxide (P2O5), ammonium salts.
P-09-0293	05/28/2024	Analytical Data for Consent Order	(G) Phosphoric acid, mixed esters with partially fluorinated alcohol, ammonium salts.
P-10-0058	05/28/2024	Analytical Data for Consent Order	(G) Partially fluorinated alcohol substituted glycol.
P-11-0091	05/29/2024	Analytical Data for Consent Order	(G) Fluorinated Acrylic Alkylamino Copolymer.
P-12-0450	05/29/2024	Analytical Data for Consent Order	(G) Partially fluorinated alcohol, reaction products with phosphorus oxide (P2O5), amine salts.
P-16-0543	05/30/2024	Exposure Monitoring Data	(G) Halogenophosphoric acid metal salt.
P-21-0202	05/29/2024	Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105).	(G) Sulfonium, carbomonocycle bis(trihaloalkyl)carbomonocycle, substituted carbomonocyclic ester.
P-22-0086	05/07/2024	Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105).	(G) Phenoxathinium, 10-phenyl-, 5-alkyl-2-alkyl-4-(2,4,6-substituted tri- carbopolycycle, hetero-acid)benzenesulfonate (1:1).
P-22-0122	05/07/2024	Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105).	(G) Heterotrisubstituted-bile acid, 1-(difluorosulfomethyl)-2,2,2-trifluoroethyl ester, ion(1-), (5)-, 5-phenyldibenzothiophenium(1:1).
P-22-0139A	05/23/2024	Migration Screen Test Data	(G) Dialkylhydroxylamine.
P-23-0176, P-23-0179, P-24-0042.	05/03/2024	Direct Photolysis Study Reports, Beaker Photolysis Report, Water Solubility Report.	(G) Sulfonium, bis(dihalo carbomonocycle)carbomonocycle-, salt with dihalo-sulfoalkyl trisubstituted benzoate; (G) Sulfonium, bis(dihalocarbomonocycle)carbomonocycle-, salt with substituted-dihalobenzoate; (G) Sulfonium, bis(dihalocarbomonocycle)carbomonocycle-, salt with (dihalo-sulfoalkyl) (halo-substituted carbomonocycle) carbopolycycle.
P-23-0176, P-23-0179, P-24-0042.	05/08/2024	Analytical Methods Development Reports, Direct Photolysis Study Report, Octanol Water Partition Coefficient Study Reports.	(G) Sulfonium, bis(dihalo carbomonocycle)carbomonocycle-, salt with dihalo-sulfoalkyl trisubstituted benzoate; (G) Sulfonium, bis(dihalocarbomonocycle)carbomonocycle-, salt with substituted-dihalobenzoate; (G) Sulfonium, bis(dihalocarbomonocycle)carbomonocycle-, salt with (dihalo-sulfoalkyl) (halo-substituted carbomonocycle) carbopolycycle.
P-24-0062, P-24-0063, P-24-0064, P-24-0065, P-24-0066, P-24-0068.	05/16/2024	Vapor Pressure Data	(G) Fatty acids, reaction products with alkene polyamine, hydrochlorides; (G) Fatty acids, reaction products with alkene polyamine, hydrochlorides; (G) Fatty acids, reaction products with alkene polyamine, hydrochlorides; (G) Fatty acids, reaction products with alkene polyamine, hydrochlorides; (G) Fatty acid polyamine condensate, hydrochlorides; (G) Functionalized fatty acids, reaction products with alkene polyamines, hydrochlorides.
P-24-0133	04/22/2024	Determination of the Number-Average Molecular Weight and the Molecular Weight Distribution of Polymers using Gel Permeation Chromatography (OECD Test Guideline 118); Determination of the Low Molecular Weight Content of a Polymer Using Gel Permeation Chromatography (OECD Test Guideline 119); <i>In Vitro</i> Skin Irritation: Reconstructed Human Epidermis Test Method (OECD Test Guideline 439); Algal Toxicity (OECD Test Guideline 201); Aquatic Invertebrate Acute Toxicity Test, Freshwater Daphnids (OECD Test Guideline 202); Reconstructed Human Cornea-like Epithelium (RhCE) Test Method (OECD Test Guideline 492); Freshwater and Saltwater Fish Acute Toxicity Test (OECD Test Guideline 203); Chronic Dephnid Toxicity Test (OECD Test Guideline 211); Melting Point/Melting Range (OECD Test Guideline 102).	(S) Siloxanes and silicones, di-me, hydrogen-terminated, polymers with 1,6-diisocyanatohexane and polyethylene glycol monoallyl ether, n3-[3-(dimethylamino)propyl]-n1,n1-dimethyl-1,3-propanediamine-blocked.
P-24-0135	04/19/2024	Repeated Dose 90-Day Oral Toxicity Study in Rodents (OECD Test Guideline 408); Repeated Dose 14-Day Oral Toxicity Study in Rodents; Prenatal Developmental Toxicity Study (OECD Test Guideline 414); Bacterial Reverse Mutation Test (OECD Test Guideline 471); <i>In Vitro</i> Mammalian Cell Gene Mutation Tests Using the Thymidine Kinase Gene (OECD Test Guideline 490); <i>In Vitro</i> Mammalian Cell Micronucleus Test (OECD Test Guideline 487).	(S) Phosphoric acid, mono- and di-c16-18-alkyl esters.
P-24-0135	04/19/2024	Earthworm Reproduction Test (OECD Test Guideline 222); Terrestrial Plant Test: Seedling Emergence and Seedling Growth Test (OECD Test Guideline 208); Soil Microorganisms: Nitrogen Transformation Test (OECD Test Guideline 216); Soil Microorganisms: Carbon Transformation Test (OECD Test Guideline 217).	(S) Phosphoric acid, mono- and di-c16-18-alkyl esters.
P-24-0135	04/19/2024	Ready Biodegradability CO ₂ Evolution Test (OECD Test Guideline 301B); Feasibility Studies in Aerobic Aquatic Sediment and Aerobic Soil.	(S) Phosphoric acid, mono- and di-c16-18-alkyl esters.

TABLE III—TEST INFORMATION RECEIVED FROM 5/01/2024 TO 5/31/2024—Continued

Case No.	Received date	Type of test Information	Chemical substance
P-24-0135	04/19/2024	Acute Oral Toxicity—Fixed Dose Method (OECD Test Guideline 420); <i>In Vitro</i> Skin Irritation (OECD Test Guideline 439); Bovine Corneal Opacity and Permeability Assay (OECD Test Guideline 437); Skin Sensitization: Local Lymph Node Assay (OECD Test Guideline 429).	(S) Phosphoric acid, mono- and di-c16-18-alkyl esters.
P-24-0135	04/19/2024	Melting Point/Melting Range (OECD Test Guideline 102); Boiling Point/Boiling Range (OECD Test Guideline 103); Density/Relative Density/Bulk Density (OECD Test Guideline 109); Surface Tension of Aqueous Solutions (OECD Test Guideline 115); Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105); Partition Coefficient (n-octanol/water), Estimation by Liquid Chromatography (OECD Test Guideline 117); Hydrolysis (OECD Test Guideline 111); Dissociation Constants in Water (OECD Test Guideline 112); Estimation of the Adsorption Coefficient (Koc) on Soil and on Sewage Sludge using High Performance Liquid Chromatography (HPLC) (OECD Test Guideline 121); Hazardous Physical Chemical Property Testing; Vapor Pressure (OECD Test Guideline 104); Flammability (OCSP Test Guideline 830.6315).	(S) Phosphoric acid, mono- and di-c16-18-alkyl esters.
P-24-0135	04/19/2024	Fish, Early-Life Stage Toxicity Test (OECD Test Guideline 210); <i>Daphnia sp.</i> , Acute Immobilization Test (OECD Test Guideline 202); <i>Daphnia magna</i> Reproduction Test (OECD Test Guideline 211); Freshwater Alga and Cyanobacteria, Growth Inhibition Test (OECD Test Guideline 201); Activated Sludge, Respiration Inhibition Test (Carbon and Ammonium Oxidation) (OECD Test Guideline 209).	(S) Phosphoric acid, mono- and di-c16-18-alkyl esters.

If you are interested in information that is not included in these tables, you may contact EPA’s technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Dated: July 8, 2024.

Todd Holderman,

Acting Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2024-15255 Filed 7-10-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners’ Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at

the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board’s Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than August 12, 2024.

A. Federal Reserve Bank of Cleveland (Nadine M. Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566. Comments can also be sent electronically to Comments.applications@clev.frb.org:

1. *Monroe Federal Bancorp, Inc., Tipp City, Ohio*; to become a savings and loan holding company by acquiring Monroe

Federal Savings and Loan Association, Tipp City, Ohio, in connection with the mutual-to-stock conversion of Monroe Federal Savings and Loan Association.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024-15268 Filed 7-10-24; 8:45 am]

BILLING CODE 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 a revision of the currently approved 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 April 29th, 2024 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 August 12, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

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 REPORTSCLEARANCEOFFICER@ahrq.hhs.gov.

SUPPLEMENTARY INFORMATION:

Proposed Project

AHRQ Safety Program for Telemedicine: Improving Antibiotic Use

This Information Collection Request (ICR) is for a revision to the AHRQ Safety Program for Telemedicine: Improving the Diagnostic Process and Improving Antibiotic Use. These changes include the removal of the Diagnostic Process Cohort, updates to the Improving Antibiotic Use Data Collection Tools and changing the name of the project to the “AHRQ Safety Program for Telemedicine: Improving Antibiotic Use.” The OMB control number for the AHRQ Safety Program for Telemedicine is 0935–0265 and will expire on April 30, 2026. Supporting documents can be downloaded from OMB’s website at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202303-0935-001. AHRQ is requesting a new expiration date, three years from approval.

Since the project received OMB approval, there have been two developments that require changes to the project’s goals and design. First, the Improving the Diagnostic Process Cohort was canceled because there was insufficient recruitment. Second, the materials approved by OMB for the Improving Antibiotic Use Cohort included a single version of the Structural Assessment and Participant Experience Survey, to be completed by all participants in the improving antibiotic use cohort. However, following pre-recruitment discussions

with AHRQ’s Technical Expert Panel (TEP) and potential participants, it was learned that the target audience for the improving antibiotic use cohort is comprised of healthcare providers from two distinctly different settings (brick-and-mortar and telemedicine-only) settings. Providers that practice in brick-and-mortar settings provide care both in-person and via telemedicine whereas providers that practice in telemedicine-only settings provide care exclusively using telemedicine. Based on this information AHRQ decided to create separate data collection tools, one for providers in a brick-and-mortar setting, and one for providers in telemedicine only. Practices and providers receive information about the program from newsletters, listservs, and direct outreach through public and private organizations. They attend an information webinar and may join the program if interested and eligible.

As in the currently approved design, the program will incorporate CUSP strategies to improve antibiotic prescribing in telemedicine. The new program goals are to:

- Identify best practices in implementing interventions to improve antibiotic use in telemedicine.
- Determine how best to adapt CUSP to enhance antibiotic use in telemedicine.
- Use a CUSP approach to design and implement the interventions for improving antibiotic use across telemedicine practices.
- Reduce inappropriate antibiotic prescribing among telemedicine practices.

To achieve these goals the following data collections will be implemented:

1. *Structural Assessment Antibiotic Use Cohort*—There will be two versions of the Structural Assessment, one for providers in a brick-and-mortar setting, and one for providers in telemedicine only. Both versions ask the same questions but vary slightly in how they refer to the practice. The assessment asks about the practice’s characteristics, experience related to antibiotic stewardship activities, and any existing supports the practice may have in place that are intended to improve antibiotic prescribing. The assessment will be administered to the Safety Program leader/champion at each participating brick-and-mortar practice or telemedicine-only organization at baseline (pre-intervention) and at the end of the intervention. The results will be used to assess changes in the practice’s infrastructure and capacity to implement the Safety Program over time. The data will provide information about any existing quality improvement

initiatives currently in place, their existing infrastructure and capacity to carry out the program, as well as changes in the infrastructure and quality improvement activities as a result of participation in the Safety Program.

2. *Medical Office Survey on Patient Safety Culture (MOSOPS)*: As currently approved, the Safety Program for Telemedicine included completion of the MOSOPS by all participating staff across all participating practices. In this revision, AHRQ will administer the MOSOPS to HCPs practicing in brick-and-mortar settings only. The MOSOPS was designed to assess key characteristics of HCPs working in-person in a single medical office and results are unlikely to be reliable or valid if administered among HCPs practicing in telemedicine-only settings. The MOSOPS will be administered to all participating staff at brick-and-mortar practices at baseline (pre-intervention) and at the end of the intervention. The survey collects information on patient safety issues, patient safety culture, medical errors, and event reporting. The data will be used to assess changes in safety culture following implementation of the Safety Program.

3. *Participant Experience Survey Antibiotic Use Cohort*—Based on feedback from the TEP and conversations with telemedicine-only organizations, this revision includes changes to the Participant Experience Survey as well as unique versions for brick-and-mortar and telemedicine-only participants. The survey will be administered to the clinical leader/champion at each practice at the end of the program (post-intervention). The survey will assess how participants approached implementation of the Safety Program.

4. *Semi-Structured Interviews Antibiotic Use Cohort*—A proportion of practices from both brick-and-mortar practices and telemedicine-only organizations will be selected to participate in telephone/virtual discussions to understand the facilitators and barriers to implementing the Safety Program. This interview guide includes four core domains that are intended to capture characteristics of health care providers (physicians, nurse practitioners, and physician assistants) and their perception of the AHRQ Safety Program for Telemedicine: Improving Antibiotic Use (“the Safety Program”) on pre- and post-implementation changes. All interviews will occur at the end of the intervention period.

5. *Antibiotic Prescription Data Template Antibiotic Use Cohort*—Each

month starting at baseline (pre-intervention) until the end of the intervention, each participating practice will extract antibiotic prescribing data from their electronic health record (EHR) system. The data will be submitted quarterly using a secure online data submission portal. The prescribing data will evaluate changes in antibiotic usage, clinical outcomes, and other effectiveness measures resulting from participation in the Safety Program. Based on feedback from participants in the prior AHRQ Safety Program, this updated version includes revisions to the EHR template to simplify the data requested in the template from aggregate to visit-level. Participating practices will submit two key types of data related to antibiotic prescribing: (1) Total antibiotic prescriptions per 100 respiratory tract infection telemedicine visits and (2) Antibiotic prescriptions per 100 antibiotic-inappropriate respiratory tract infection telemedicine visits. This data will be an important way for the practice to monitor its prescribing practices throughout the course of the program and will be used by the assessment team to monitor and describe prescribing trends across practices enrolled in the program.

This study is being conducted by AHRQ through its contractor, NORC at the University of Chicago and Johns Hopkins Medicine, pursuant to AHRQ’s statutory authority to conduct and support research on healthcare 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 minimize respondent burden and to permit the electronic submission of survey responses and data collection forms, the structural assessment, AHRQ MOSOPS, participant experience survey, and antibiotic prescription data template will be web-based and deployed using a well-designed, low burden, and respondent-friendly survey administration process. In addition, the EHR data extracted by practice staff that are requested for this program may already be collected by practices as part of their ongoing quality improvement initiatives. Practices will receive access to the online data collection platform and detailed instructions on completing the online forms and EHR data submissions.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents’ time to participate in this project.

1. Structural Assessment Antibiotic Use Cohort—The assessment will be administered twice to the Safety Program leader/champion at each participating brick-and-mortar practice or telemedicine-only organization, once at baseline (pre-intervention) and again at the end of the intervention. AHRQ expects 188 respondents at each administration. The Assessment requires 12 minutes to complete.

2. Medical Office Survey on Patient Safety (MOSOPS)—The MOSOPS will be completed by all participating staff at brick-and-mortar practices to assess patient safety issues, medical errors, and event reporting practices. The survey will be completed twice, once at baseline (pre-intervention) and at the end of the intervention to measure the changes in patient safety culture resulting from participation in the

Safety Program. The survey will be completed by 438 staff members at each administration and requires 30 minutes to complete.

3. Participant Experience Survey Antibiotic Use Cohort—The Participant Experience Survey will be administered once to the Safety Program leader/ champion at the end of the intervention to assess participant engagement and progress; understand providers’ experience using materials and participating in the Safety Program; and identify processes used and changes made to implement and sustain the Safety Program. The survey is estimated to require 20 minutes to complete.

4. Semi-Structured Interviews Antibiotic Use Cohort—Semi-structured interviews will be conducted at the end of the intervention among clinical and professional support staff from a sample of practices to collect qualitative information on the implementation of the program. Interviews will be conducted with 18 participating practices/organizations and requires one hour to complete.

5. Antibiotic Prescription Data Template Antibiotic Use Cohort—The Antibiotic Prescription Data Template will be completed each month and submitted quarterly starting in the baseline (pre-intervention) period until the end of the intervention to measure changes in antibiotic usage resulting from the intervention. The data will be extracted from the practice/ organization’s electronic health records, by a staff member, and entered into the data template. AHRQ expects 225 practices/organizations to extract data monthly for 18 months. Each monthly data extraction should require one hour of a staff members time.

The total burden for the respondents’ time to participate in this research is estimated to be 4,644 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents *	Number of responses per respondent	Hours per response	Total burden hours
1. Structural Assessment	188	2	12/60	75
2. MOSOPS (brick-and-mortar only)	438	2	30/60	438
3. Participant Experience Survey	188	1	20/60	63
4. Semi-structured interviews	18	1	1	18
5. Antibiotic Prescription Data Template	225	18	1	4,050
Total	1,057	na	na	4,644

* Annualized number of respondents is based on maximum practices recruited, assuming 50% of the practices are telemedicine-only and 50% are brick-and-mortar, and 75% response rate for forms 1 and 3, 50% response rate for form 2, and 90% response rate for forms 4 and 5.

Exhibit 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 \$366,163.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Total burden hours	Average hourly wage rate**	Total burden cost
1. Structural Assessment	75	^a \$119.54	\$8,966
2. AHRQ Medical Office Survey on Patient Safety Culture MOSOPS (brick-and-mortar only).			
a. Physicians	219	^a 119.54	26,179
b. Other Health Practitioners	219	^b 34.04	7,455
3. Participant Experience Survey	63	^a 119.54	7,115
4. Semi-structured qualitative interviews	18	^a 119.54	2,152
5. Antibiotic Prescription Data Template	4,050	^c 76.79	311,000
Total	4,644		366,163

** Annualized number of respondents is based on maximum practices recruited, assuming 50% of the practices are telemedicine-only and 50% are brick-and-mortar, and 75% response rate for forms 1 and 3, 50% response rate for form 2, and 90% response rate for forms 4 and 5.

** National Compensation Survey: Occupational wages in the United States May 2023 “U.S. Department of Labor, Bureau of Labor Statistics:” https://www.bls.gov/oes/current/oes_stru.htm.

^a Based on the mean wages for 29–1229 Physicians and Surgeons, All Other.

^b Based on the mean wages for 29–9099 Other Healthcare Practitioners and Technical Occupations: Healthcare Practitioners and Technical Workers, All Other.

^c Based on an average of the mean wages for 29–1229 Physicians and Surgeons, All Other and 29–9099 Other Healthcare 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: July 8, 2024.

Marquita Cullom,

Associate Director.

[FR Doc. 2024–15250 Filed 7–10–24; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10398]

Emergency Reinstatement: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is requesting that this information collection request (ICR), for the reinstatement of certain generic information collection requests (GenICs) be processed under the emergency Paperwork Reduction Act of 1995 (PRA) clearance process. Such GenICs are without change. We seek emergency reinstatement since we believe that public harm is reasonably likely to ensue if the normal, non-emergency clearance procedures are followed.

DATES: Comments must be received by July 16, 2024.

ADDRESSES: *Submitting Comments.* When commenting, please reference the applicable collection’s CMS ID number and/or the OMB control number (both numbers are listed below under the **SUPPLEMENTARY INFORMATION** caption). To be assured consideration, comments and recommendations must be submitted in any one of the following ways and by the applicable due date:

1. *Electronically.* We encourage you to submit comments through the Federal eRulemaking portal at the applicable

web address listed below under the **SUPPLEMENTARY INFORMATION** caption under “Docket Information.” If needed, instructions for submitting such comments can be found on that website.

2. *By regular mail.* Alternatively, you can submit written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs (OSORA), Division of Regulations Development, Attention: CMS–10398/OMB 0938–1148, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Obtaining Documents. To obtain copies of supporting statements and any related forms and supporting documents for the collections listed in this notice, we encourage you to access the Federal eRulemaking portal at the applicable web address listed below under the **SUPPLEMENTARY INFORMATION** caption under “Docket Information” and “Docket Web Address.” If needed, follow the online instructions for accessing the applicable docket and the documents contained therein.

FOR FURTHER INFORMATION CONTACT: For general information contact William N. Parham at 410–786–4669. For policy related questions contact the individual listed below under the **SUPPLEMENTARY INFORMATION** caption under “Docket Information.”

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c). Generally, it applies to voluntary and mandatory requirements that are related to any one or more of the following activities: the collection of information,

the reporting of information, the disclose of information to a third-party, and/or recordkeeping.

While there are some exceptions (such as collections having non-substantive changes and collections requesting emergency approval) section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a notice in the **Federal Register** and solicit comment on each of its proposed collections of information, including: new collections, extensions of existing collections, revisions of existing collections, and reinstatements of previously approved collections before submitting such collections to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Interested parties are invited to submit comments regarding our burden estimates or any other aspect of the collection, including: the necessity and utility of the proposed information collection for the proper performance of our agency's functions; the accuracy of burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden. See **DATES** and **ADDRESSES** for instructions for submitting comments.

While we will review all comments received, we may choose not to post off-topic or inappropriate comments. Otherwise, all comments will be posted without edit under the applicable docket number, including any personal information that the commenter provides. Our response to such comments will be posted at [reginfo.gov](https://www.reginfo.gov) under the applicable OMB control number.

Emergency Reinstatement

Given the essential role the subject ICRs play and the severe beneficiary and programmatic harms that would occur without them, CMS is seeking emergency reinstatement of such collections. The public harm caused by the severe disruptions of the Medicaid and CHIP programs that would result from a further lapse in PRA approval are not speculative. The collection of such information are actively used to ensure fiscal integrity and the maintenance and expansion of coverage. Waiting to reinstate the GenICs until the full package has been processed under standard clearance procedures would threaten CMS' essential mission and cause substantial disruption and far-reaching harm to the Medicaid and CHIP programs and the beneficiaries we serve. Our justification for the

emergency reinstatement is attached to the posting at: <https://www.regulations.gov/docket/CMS-2024-0201>.

Generic Umbrella for Medicaid and CHIP State Plan, Waiver, and Program Submissions

At this time, our collection is made up of the main umbrella (see collection number 1 in the following list) and fifty individual generic collections of information. We are requesting emergency reinstatement of the main umbrella and the generic collections listed below under *Docket Information*. Details such as the collection's requirements and burden estimates can be found in the collection's supporting statement and associated materials (see **ADDRESSES** for instructions for obtaining such documents).

Docket Information

1. *Title:* Generic Clearance for Medicaid and CHIP State Plan, Waiver, and Program Submissions.

Type of Request: Reinstatement of a previously approved collection.

CMS ID Number: CMS-10398.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0201.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0201>.

For Policy Related Questions Contact: William N. Parham at 410-786-4669.

2. *Title:* CHIP Annual Report Template System (CARTs).

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #1.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0202.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0202>.

For Policy Related Questions Contact: Gigi Raney at 410-786-6117.

3. *Title:* Medicaid Managed Care Data Collection.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #2.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0203.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0203>.

For Policy Related Questions Contact: Alexis Gibson at 410-786-2813.

4. *Title:* Medicaid Payment Suspensions.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #5.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0204.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0204>.

For Policy Related Questions Contact: Vikki Guarisco at 443-764-4776.

5. *Title:* Cycle IV (AI/AN Round II Outreach & Enrollment Grant Final Report Addendum) and Cycle V (Connecting Kids to Coverage Outreach and Enrollment Semi-Annual and Final).

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #7.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0205.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0205>.

For Policy Related Questions Contact: Stephanie Bell at 410-786-0617.

6. *Title:* Application for Section 1915(b)(4) Waiver—Fee For Service Selective Contracting Program.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #9.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0206.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0206>.

For Policy Related Questions Contact: Rebecca Burch Mack at 303-844-7355.

7. *Title:* Section 1115 Demonstration and Waiver Application.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #10.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0207.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0207>.

For Policy Related Questions Contact: Teresa DeCaro at 202-384-6309.

8. *Title:* MAGI-Based Eligibility Verification Plan.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #11.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0208.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0208>.

For Policy Related Questions Contact: Martin Burian at 410-786-3246.

9. *Title:* Medicaid Accountability—Nursing Facility, Outpatient Hospital and Inpatient Hospital Upper Payment Limits.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #13.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0209.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0209>.

For Policy Related Questions Contact: Richard Kimball at 410-786-2278.

10. *Title:* Federally-Facilitated Marketplace (FFM) Integration Data Collection Tool.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #16.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0210.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0210>.

For Policy Related Questions Contact: Pascale Ghafari at 410-786-0719.

11. *Title:* CHIP State Plan Eligibility.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #17.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0211.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0211>.

For Policy Related Questions Contact: Joyce Jordan at 410-786-3413.

12. *Title:* FMAP Claiming State Plan Amendment.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #21.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0212.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0212>.

For Policy Related Questions Contact: Robert Lane at 410-786-2015.

13. *Title:* Medicaid Accountability—UPL ICF/IID, Clinic Services, Medicaid Qualified Practitioner Services and Other Inpatient & Outpatient Facility Providers.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #24.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number:

CMS-2024-0213.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0213>.

For Policy Related Questions Contact: Richard Kimball at 410-786-2278.

14. *Title:* MAGI Conversion Plan Part 2.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #27.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0214.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0214>.

For Policy Related Questions Contact: Martin Burian at 410-786-3246.

15. *Title:* MMIS APD Template NCCI Coding Initiative.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #28.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0215.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0215>.

For Policy Related Questions Contact: Wendy Alexander at 410-786-5245.

16. *Title:* Medicaid Cost Sharing.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #29.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0216.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0216>.

For Policy Related Questions Contact: Stephanie Bell at 410-786-0617.

17. *Title:* State Reporting Medicaid Payment Suspension.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #30.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0217.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0217>.

For Policy Related Questions Contact: Wendy Alexander at 410-786-5245.

18. *Title:* Statewide HCBS Transition Plans.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #31.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number:

CMS-2024-0218.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0218>.

For Policy Related Questions Contact: Michele MacKenzie at 410-786-5929.

19. *Title:* Provider-Preventable Conditions under 42 CFR 438.6 and 447.26 and Title 2702 Non-Payment Preprint (Attachment 4.19).

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #32.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0219.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0219>.

For Policy Related Questions Contact: Andrew Badaracco at 410-786-4589.

20. *Title:* Opportunity for families of Disabled Children to Purchase Medicaid Coverage for Such Children (DRA 6062).

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #33.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0220.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0220>.

For Policy Related Questions Contact: Martin Burian at 410-786-3246.

21. *Title:* Model Application Template and Instructions for State Child Health Plan Under Title XXI of the Social Security Act, State Children's Health Insurance Program.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #34.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0221.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0221>.

For Policy Related Questions Contact: Chanelle Parker at 667-290-9798.

22. *Title:* Eligibility and Enrollment Performance Indicators.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS-10398 #35.

OMB Control Number: 0938-1148.

eRulemaking Docket ID Number: CMS-2024-0222.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0222>.

For Policy Related Questions Contact: Vikki Guarisco at 443-764-4776.

23. *Title:* Managed Care Rate Setting Guidance.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #37.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0223.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0223>.

For Policy Related Questions Contact: Rebecca Burch Mack at 303–844–7355.

24. *Title:* Section 223 Demonstration Programs to Improve Community Mental Health Services.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #43.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0224.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0224>.

For Policy Related Questions Contact: Beverly Boston at 410–786–4186.

25. *Title:* 1915(i) State Plan Home and Community Based Services.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #46.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0225.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0225>.

For Policy Related Questions Contact: Kathy Poisal at 410–786–5940.

26. *Title:* Section 223 Demonstration Programs to Improve Community Mental Health Services.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #48.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0226.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0226>.

For Policy Related Questions Contact: Beverly Boston at 410–786–4186.

27. *Title:* Community First Choice State Plan.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #50.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0227.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0227>.

For Policy Related Questions Contact: Adrienne Delozier at 410–786–0278.

28. *Title:* Fast Track Federal Review Process for Section 1115 Medicaid and CHIP Demonstration Extensions.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #51.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0228.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0228>.

For Policy Related Questions Contact: Teresa DeCaro at 202–384–6309.

29. *Title:* Delivery System and Provider Payment Initiatives Under Medicaid Managed Care Products.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #52.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0229.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0229>.

For Policy Related Questions Contact: John Giles at 667–290–8626.

30. *Title:* Section 1115 Substance Use Disorder (SUD) Demonstration: Guide for Developing Implementation Plan Protocols.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #53.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0230.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0230>.

For Policy Related Questions Contact: Teresa DeCaro at 202–384–6309.

31. *Title:* Electronic Visit Verification (EVV) Good Faith Effort Exemption Requests.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #54.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0231.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0231>.

For Policy Related Questions Contact: Ryan Shannahan at 410–786–0295.

32. *Title:* Limit on Federal Financial Participation for Durable Medical Equipment in Medicaid.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #55.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0232.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0232>.

For Policy Related Questions Contact: Richard Kimball at 410–786–2278.

33. *Title:* Section 1115 Demonstration: Budget Neutrality Workbook.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #56.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0233.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0233>.

For Policy Related Questions Contact: Teresa DeCaro at 202–384–6309.

34. *Title:* Section 1115 Substance Use Disorder (SUD) Demonstration: Monitoring Reports Documents and Templates.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #57.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0234.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0234>.

For Policy Related Questions Contact: Teresa DeCaro at 202–384–6309.

35. *Title:* Medicaid Section 1115 Eligibility and Coverage Demonstration Implementation Plan and Monitoring Reports Documents and Templates.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #58.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0235.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0235>.

For Policy Related Questions Contact: Teresa DeCaro at 202–384–6309.

36. *Title:* Medicaid Section 1115 Severe Mental Illness and Children with Serious Emotional Disturbance Demonstrations.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #59.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number:

CMS–2024–0236.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0236>.

For Policy Related Questions Contact: Teresa DeCaro at 202–384–6309.

37. *Title:* Medicaid Disaster Relief for the COVID–19 National Emergency State Plan Amendment Template and Instructions.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #61.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0237.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0237>.

For Policy Related Questions Contact: Anne Marie Costello at 410–786–5075.

38. *Title:* Data Collection for Section 1003 of the SUPPORT Act.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #62.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0238.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0238>.

For Policy Related Questions Contact: Melanie Brown at 410–786–1095.

39. *Title:* 1932(a) State Plan Amendment Template.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #63.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0239.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0239>.

For Policy Related Questions Contact: Amy Gentile at 410–786–3499.

40. *Title:* Federal Meta-Analysis Support: Section 1115 Substance Use Disorder Demonstrations.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #64.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0240.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0240>.

For Policy Related Questions Contact: Danielle Daly at 410–786–0897.

41. *Title:* Medicaid and CHIP COVID 19 Public Health Emergency Unwinding Reports.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #66.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0241.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0241>.

For Policy Related Questions Contact: Jessica Stephens at 410–786–3341.

42. *Title:* Section 1006(b) of the SUPPORT Act: Medicaid Assisted Treatment (MAT).

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #68.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0242.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0242>.

For Policy Related Questions Contact: Kirsten Jensen at 410–786–8146.

43. *Title:* Reporting Requirements for Additional Funding for Medicaid HCBS During the COVID–19 Emergency.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #69.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0243.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0243>.

For Policy Related Questions Contact: Stephanie Bell at 410–786–0617.

44. *Title:* Reporting Requirements for State Planning Grants for Qualifying Community Based Mobile Crisis Intervention Services During the COVID–19 Emergency.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #71.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0244.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0244>.

For Policy Related Questions Contact: Effie George at 410–786–8639.

45. *Title:* Supplemental Payment Reporting under the Consolidated Appropriations Act, 2021.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #73.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0245.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0245>.

For Policy Related Questions Contact: Richard Kimball at 410–786–2278.

46. *Title:* Coverage of Routine Patient Cost for Items & Services in Qualifying Clinical Trials.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #74.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0246.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0246>.

For Policy Related Questions Contact: Myla Adams at 410–786–8107.

47. *Title:* ARP 1135 State Plan Amendment.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #75.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0247.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0247>.

For Policy Related Questions Contact: Kirsten Jensen at 410–786–8146.

48. *Title:* Expressions of Interest in the Improving Maternal Health by Reducing Low-Risk Cesarean Delivery Affinity Group.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #76.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0248.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0248>.

For Policy Related Questions Contact: Richard Kimball at 410–786–2278.

49. *Title:* COVID–19 Risk Corridor Reconciliation Reporting Template.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #79.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS–2024–0249.

Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0249>.

For Policy Related Questions Contact: Elizabeth Jones at 410–786–7111.

50. *Title:* Improving Quality of Care and Outcomes Data for Pregnant Medicaid Beneficiaries and Newborn Infants through Linkage and Evaluation of VR, BC, DC, and TAF.

Type of Request: Reinstatement of a previously approved information collection.

CMS ID Number: CMS–10398 #81.

OMB Control Number: 0938–1148.

eRulemaking Docket ID Number: CMS-2024-0250.
Docket Web Address: <https://www.regulations.gov/docket/CMS-2024-0250>.

For Policy Related Questions Contact: Ali Fokar at 410-786-0020.

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024-15185 Filed 7-10-24; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Intergovernmental Reference Guide (IRG) (Office of Management and Budget No.: 0970-0209)

AGENCY: Office of Child Support Services, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF), Office of Child Support Services (OCSS), is requesting the Office of Management and Budget (OMB) to approve the Intergovernmental Reference Guide

(IRG), for an additional three years. The IRG contains State and Tribal child support information that helps child support agencies (CSAs) administer their respective programs. Minor updates are proposed, as described below. The current OMB approval (OMB #: 0970-0209) expires on February 28, 2025.

DATES: *Comments due* September 9, 2024. In compliance with the requirements of the Paperwork Reduction Act of 1995, the ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing infocollection@acf.hhs.gov. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The IRG is a centralized and automated repository of State and Tribal profiles that contains high-level descriptions of each CSA program. These profiles provide State, Tribal, and foreign country CSAs with an effective and efficient method for updating and accessing information needed to process intergovernmental child support cases.

Revisions are proposed as a result of feedback from respondents suggesting changes, recommendations from the program team, or from the program team workgroup of interested partners. The

workgroup is engaged to evaluate the efficacy of the instruments. Specifically, the following changes are proposed:

- Minor edits to change Office of Child Support Enforcement (OCSE) to Office of Child Support Services (OCSS).
 - Edits to the State profile based on recommendations that were received but not implemented in 2022 when the current version of the profile went through the OMB approval process. OCSS has an overview of those recommendations and OCSS responses available upon request.
 - Edits to clarify the State profile questions to make it easier for respondents to understand and complete them. Some of these edits were based on the comments referenced in the prior bullet and others based on other feedback from program staff and workgroup members.
 - Addition of questions in the State profile instrument that are designed to help States establish health care coverage and manage the financial aspects of child support services. The new questions pertain to policies and procedures associated with new hire reporting, income withholdings, lump sum payments, medical support, and State electronic funds transfers. The addition of these questions slightly increased the estimated time per response from .3 hours to .5 hours.
- Respondents:* State and Tribal CSAs.

ANNUAL BURDEN ESTIMATES

Information collection instrument	Total number of annual respondents	Number of annual responses per respondent	Average annual burden hour per response	Annual burden hours
IRG: State Profile Guide (states and territories)	54	18	0.5	486
IRG: Tribal Profile Guide	62	18	0.3	335

Estimated Total Annual Burden Hours: 821.

Comments: The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given

to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 652(a)(7); 42 U.S.C. 666(f); 45 CFR 301.1; 45 CFR 303.7, and 45 CFR 309.120.

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024-15277 Filed 7-10-24; 8:45 am]

BILLING CODE 4184-41-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-E-3084]

Determination of Regulatory Review Period for Purposes of Patent Extension; SPEVIGO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for SPEVIGO and is publishing this notice of that determination as required

by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by September 9, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 7, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 9, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2023-E-3084 for “Determination of Regulatory Review Period for Purposes of Patent Extension; SPEVIGO.” Received comments, those filed in a timely manner (see *ADDRESSES*), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the

electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product SPEVIGO (spesolimab-sbzo). SPEVIGO is indicated for the treatment of generalized pustular psoriasis flares in adults. Subsequent to this approval, the USPTO received a patent term

restoration application for SPEVIGO (U.S. Patent No. 9,023,995) from Boehringer Ingelheim International GmbH, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 18, 2024, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of SPEVIGO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for SPEVIGO is 1,729 days. Of this time, 1,393 days occurred during the testing phase of the regulatory review period, while 336 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* December 9, 2017. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 9, 2017.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* October 1, 2021. FDA has verified the applicant's claim that the biologics license application (BLA) for SPEVIGO (BLA 761244) was initially submitted on October 1, 2021.

3. *The date the application was approved:* September 1, 2022. FDA has verified the applicant's claim that BLA 761244 was approved on September 1, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,033 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence

during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA-2013-S-0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: July 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-15239 Filed 7-10-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-N-4853]

Receipt of Notice That a Patent Infringement Complaint Was Filed Against a Biosimilar or Interchangeable Biosimilar Applicant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing notice that an applicant for a biologics license application (BLA) for a biosimilar or interchangeable biosimilar product submitted under the Public Health Service Act (PHS Act) (a "subsection (k) applicant") notified FDA that an action for patent infringement was filed in connection with the applicant's BLA. Under the PHS Act, within 30 days after the subsection (k) applicant is served with a complaint in an action for patent infringement described under the PHS Act, the subsection (k) applicant shall provide the Secretary of Health and Human Services (HHS) with notice and copy of such complaint. FDA is required to publish notice of the complaint in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mustafa Ünlü, Center for Drug Evaluation and Research, Food and

Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 1139, Silver Spring, MD 20993, 301-796-3396, Mustafa.Unlu@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) was enacted as part of the Patient Protection and Affordable Care Act (Pub. L. 111-148) on March 23, 2010. The BPCI Act amended the PHS Act and created an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)) sets forth the requirements for an application for a proposed biosimilar product and an application or a supplement for a proposed interchangeable product.

Section 351(l) of the PHS Act describes certain procedures for exchanging patent information and resolving patent disputes between a subsection (k) applicant and the holder of the BLA reference product. If a subsection (k) applicant is served with a complaint in an action for a patent infringement described in section 351(l)(6) of the PHS Act, the subsection (k) applicant is required to provide the Secretary of HHS with notice and a copy of the complaint within 30 days of service. FDA is required to publish notice of a complaint received under section 351(l)(6)(C) of the PHS Act in the **Federal Register**.

FDA received notice of the following complaint under section 351(l)(6)(C) of the PHS Act: *Regeneron Pharmaceuticals, Inc. v. Amgen Inc.*, 2:24-CV-00264 (C.D. Cal., filed January 10, 2024).

FDA has only a ministerial role that is limited to publishing notice of a complaint received under section 351(l)(6)(C) of the PHS Act and does not perform a substantive review of the complaint.

Dated: July 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-15237 Filed 7-10-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-D-0466]

Clinical Considerations for Studies of Devices Intended To Treat Opioid Use Disorder; Guidance for Industry and Food and Drug Administration Staff; 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 final guidance entitled “Clinical Considerations for Studies of Devices Intended To Treat Opioid Use Disorder.” Design of clinical studies for devices intended to treat opioid use disorder (OUD) is challenging. To help spur innovative options to combat the opioid overdose crisis and treat OUD, this guidance provides recommendations on the design of pivotal clinical studies for devices intended to treat OUD (OUD device studies). Through these recommendations, FDA intends to aid sponsors in developing OUD device studies that provide scientific evidence used to determine whether there is a reasonable assurance of safety and effectiveness for treating OUD.

DATES: The announcement of the guidance is published in the **Federal Register** on July 11, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances 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-0466 for “Clinical Considerations for Studies of Devices Intended To Treat Opioid Use Disorder.” 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)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled “Clinical Considerations for Studies of Devices Intended To Treat Opioid Use Disorder” to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Megha Reddy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2568, Silver Spring, MD 20993-0002, 240-402-2980.

SUPPLEMENTARY INFORMATION:

I. Background

FDA recognizes the value of medical device innovation to address unmet clinical needs arising from the opioid public health emergency in the United States. FDA’s Center for Devices and Radiological Health (CDRH) encourages development of innovative options to combat the opioid overdose crisis. To help spur innovative options to combat the opioid overdose crisis and treat OUD, this guidance provides recommendations on the design of pivotal OUD device studies. Through these recommendations, FDA intends to aid sponsors in developing OUD device studies that provide scientific evidence used to determine whether there is a reasonable assurance of safety and effectiveness for treating OUD. Because of the complexity of OUD, there are many challenges in designing OUD device studies. These challenges

include inaccurate participant reports of drug use, high rates of missing data, the confounding effects of concomitant drug treatments, and the need to demonstrate the durability of the device’s treatment effect, which can necessitate prolonged observation.

A notice of availability of the draft guidance appeared in the **Federal Register** of July 28, 2023 (88 FR 48888). FDA considered comments received and has made some minor edits for clarity.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on Clinical Considerations for Studies of Devices Intended To Treat Opioid Use Disorder. 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. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all CDRH guidance documents is available at <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>. This guidance document is also available at <https://www.regulations.gov> and <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>. Persons unable to download an electronic copy of “Clinical

Considerations for Studies of Devices Intended To Treat Opioid Use Disorder” may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number GUI00019017 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

21 CFR part; guidance; or FDA form	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
“Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program”.	Q-submissions and Early Payor Feedback Request Programs for Medical Devices.	0910–0756
860, subpart D	De Novo classification process	0910–0844

Dated: July 5, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–15130 Filed 7–10–24; 8:45 am]

BILLING CODE 4164–01–P

Dated: July 5, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–15187 Filed 7–10–24; 8:45 am]

BILLING CODE 4140–01–P

Dated: July 5, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–15188 Filed 7–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Clinical Trials and Comparative Effectiveness Research in Neurology, July 09, 2024, 09:00 a.m. to July 10, 2024, 02:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on June 13, 2024, FR Doc. 2024–13021, 89 FR 50347.

This notice is being amended to change the dates of this two-day meeting from July 9, 2024, and July 10, 2024, to July 29, 2024, and July 30, 2024. The meeting time remains the same. The meeting is closed to the public.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Early Phase Clinical Trials in Neurology, July 10, 2024, 02:00 p.m. to July 10, 2024, 05:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, which was published in the **Federal Register** on June 13, 2024, FR Doc. 2024–13021, 89 FR 50347.

This notice is being amended to change the date of this one-day meeting from July 10, 2024, to July 30, 2024. The meeting time remains the same. The meeting is closed to the public.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Vaccine (and Other

Biologic) Manufacturing Services for Infectious Diseases.

Date: July 26–August 16, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20852 (Video Assisted Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F30, Rockville, MD 20852, (240) 669–5931, jakesse@mail.nih.gov. (Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 5, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–15220 Filed 7–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting of the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given for the meeting on August 27, 2024, of the Center for Substance Abuse Prevention National Advisory Council (CSAP NAC). The meeting is open to the public and can also be accessed virtually. Agenda with call-in information will be posted on the SAMHSA website prior to the meeting at: <https://www.samhsa.gov/about-us/advisory-councils/meetings>. The meeting will include, but not be limited to, remarks from the Assistant Secretary for Mental Health and Substance Use; approval of the meeting minutes of February 27, 2024; an update from the CSAP NAC Substance Use Prevention Workforce Subcommittee; overview and discussion on CSAP's primary prevention portfolio; Council discussion and public comments.

DATES: August 27, 2024, 9:00 a.m. to approximately 4:00 p.m. EDT, Open.

ADDRESSES: 200 Independence Ave. SW, Washington, DC 20201 (Room 425A).

FOR FURTHER INFORMATION CONTACT:

CAPT Jennifer Fan, PharmD, JD, Designated Federal Official; Substance Abuse and Mental Health Service Administration, CSAP National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail); telephone: (240) 276–0422; email: Jennifer.fan@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION: The CSAP NAC was established to advise the Secretary, Department of Health and Human Services (HHS), and the Assistant Secretary for Mental Health and Substance Use, SAMHSA; and the Director, CSAP, concerning matters relating to the activities carried out by and through the Center and the policies respecting such activities.

Interested persons may present data, information, or views orally or in writing, on issues pending before the Council. Written submissions must be forwarded to the contact person no later than 7 days before the meeting. Oral presentations from the public will be scheduled for the public comment section at the end of the council discussion. Individuals interested in making oral presentations must notify the contact person by 1:00 p.m. (EDT), August 20, 2024. Up to three minutes will be allotted for each presentation, and as time permits, as these are presented in the order received. Public comments received will become part of the meeting records.

To obtain the call-in number, access code, and/or web access link; submit written or brief oral comments; or request special accommodations for persons with disabilities, please register on-line at: <https://snacregister.samhsa.gov>, or communicate with the contact person. Meeting information and a roster of Council members may be obtained either by accessing the CSAP Council's website at <https://www.samhsa.gov/about-us/advisory-councils>, or by contacting Jennifer Fan.

Authority: Public Law 92–463.

Dated: July 5, 2024.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2024–15245 Filed 7–10–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will hold an in-person public meeting with a virtual option on Thursday, August 29, 2024, and Friday, August 30, 2024. The meeting will be open to the public in-person and via a Microsoft Teams Video Communications link.

DATES: The TMAC will meet on Thursday, August 29, 2024 and Friday, August 30, 2024, from 8:00 a.m. to 5:00 p.m. Eastern Time (ET). Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in person at 400 C Street SW, Washington, DC 20472 and virtually using the following Microsoft Teams Video Communications link (Thursday Link: <https://tinyurl.com/yskff3sz>; Friday Link: <https://tinyurl.com/yskff3sz>). Members of the public who wish to attend the in-person or virtual meeting must register in advance by sending an email to FEMA-TMAC@fema.dhs.gov (Attn: Brian Koper) by 5:00 p.m. ET on Monday, August 26, 2024.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** caption below. Associated meeting materials will be available upon request after Friday, August 23, 2024. To receive a copy of any relevant materials, please send the request to: FEMA-TMAC@fema.dhs.gov (Attn: Brian Koper). Written comments to be considered by the committee at the time of the meeting must be submitted and received by Monday, August 26, 2024, 5:00 p.m. ET identified by Docket ID FEMA–2014–0022, and submitted by the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** Address the email to FEMA-TMAC@fema.dhs.gov. Include the docket number in the subject line of the

message. Include name and contact information in the body of the email.

Instructions: All submissions received must include the words “Federal Emergency Management Agency” and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may wish to review the Privacy and Security Notice via a link on the homepage of <http://www.regulations.gov>.

Docket: For docket access to read background documents or comments received by the TMAC, go to <http://www.regulations.gov> and search for the Docket ID FEMA-2014-0022.

A public comment period will be held on Thursday, August 29, 2024, from 3:30 p.m. to 4:00 p.m. ET and Friday, August 30, 2024, from 3:30 p.m. to 4:00 p.m. ET. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by Monday, August 26, 2024, 5:00 p.m. ET. Please be prepared to submit a written version of your public comment.

FEMA is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation to fully participate due to a disability, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** caption as soon as possible.

FOR FURTHER INFORMATION CONTACT: Brian Koper, Designated Federal Officer for the TMAC, FEMA, 400 C Street SW, Washington, DC 20472, telephone 202-646-3085, and email brian.koper@fema.dhs.gov. The TMAC website is: <https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council>.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act*, Public Law 117-286, 5 U.S.C. ch. 10.

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012*, the TMAC makes recommendations to the FEMA Administrator on: (1) how to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data

quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) a description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: The purpose of this meeting is for the TMAC members to discuss and deliberate on the content of the 2024 TMAC Annual Report. Any related materials will be available upon request prior to the meeting to provide the public with an opportunity to review the materials. The full agenda and related meeting materials will be available upon request by Friday, August 23, 2024. To receive a copy of any relevant materials, please send the request to: FEMA-TMAC@fema.dhs.gov (Attn: Brian Koper).

Nicholas A. Shufro,

Acting Assistant Administrator, Risk Analysis, Planning & Information Directorate, Resilience, Federal Emergency Management Agency.

[FR Doc. 2024-15276 Filed 7-10-24; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2024-0022]

Request for Information on the National Flood Insurance Program’s Community Rating System Redesign Effort

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Request for information and notice of meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) is issuing this Request for Information (RFI) to receive the public’s input on potential

future changes to the Community Rating System (CRS) under the National Flood Insurance Program (NFIP). This RFI seeks further input on suggested alternative program features and approaches for a redesigned CRS program, based upon public input from the August 23, 2021 “Request for Information on the National Flood Insurance Program’s Community Rating System” published in the **Federal Register**. FEMA will host virtual public meetings at the times and dates listed below.

DATES: Comments must be received on or before September 9, 2024. Submissions received after that date may not be considered.

For Public Meetings: FEMA will hold virtual public meetings on Wednesday, August 21, 2024 from 2:00 p.m. to 3:30 p.m. EDT and Thursday, August 22, 2024 from 3:00 p.m. to 4:30 p.m. EDT for a general audience and on Tuesday, August 27, 2024 from 3:00–4:30 p.m. EDT focused on issues specific to Indian Tribal governments. Depending on the number of speakers, the meeting may end before the time indicated, following the last call for comments. Requests to participate must be received via the virtual meeting website no later than Monday, August 19, 2024. Registration must be completed using the links below specific to each meeting:

- Register for the August 21, 2024 meeting using https://cgstrategy.zoom.us/webinar/register/WN_4INLltBUUQaqI2dxRPJtwHg.
- Register for the August 22, 2024 meeting using https://cgstrategy.zoom.us/webinar/register/WN_qKV8jzlgQe6rtLnpDqWOA.
- Register for the August 27, 2024 Tribal focused meeting using https://cgstrategy.zoom.us/webinar/register/WN_t7ex0KIyRjGX8J0qYHHqDg.

Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation (e.g., Communication Access Real-Time Translation [CART], sign language interpretation), contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below by Monday, August 19, 2024. Last minute requests will be accepted but may not be possible to fulfill.

ADDRESSES: Interested persons may submit comments responsive to this RFI electronically through the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the instructions for submitting comments and use docket ID: FEMA-2024-0022. Submitting this information makes it public; you may wish to read the

Privacy and Security Notice on <https://www.regulations.gov>.

Commenters are encouraged to identify specific question or questions they are responding to by number. All submissions received must include the agency name and Docket ID, and will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov> and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of <https://www.regulations.gov>. Responses should not include any personally identifiable information or confidential commercial information.

For Public Meetings: Public meetings for a general audience will be held virtually on Wednesday, August 21, 2024 from 2:00 p.m. to 3:30 p.m. EDT and Thursday, August 22, 2024 from 3:00 p.m. to 4:30 p.m. EDT and for issues specific to Indian Tribal governments on Tuesday, August 27, 2024 from 3:00 p.m. to 4:30 p.m. EDT. Links to register for the meetings are provided above. If you would like to speak at a meeting, please so indicate on the registration form. For the August 27, 2024 Tribal meeting, FEMA will be prioritizing comments from representatives and members of Indian Tribal governments.

FOR FURTHER INFORMATION CONTACT: Shilpa Mulik, CRS Redesign Program Manager, Hazard Mitigation Directorate, Resilience, FEMA. Phone: (202) 212-7313; Email: FEMA-CRS-Redesign@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Community Rating System

Between 2000 and 2024, floods have cost approximately \$107.7 billion dollars in damage throughout the United States.¹ Standard homeowners and commercial property insurance policies do not cover flood losses.² To meet the need for vital flood insurance coverage, FEMA administers the National Flood Insurance Program (NFIP), which offers flood insurance coverage for buildings and/or contents in communities that comply with the

¹ NOAA National Centers for Environmental Information, U.S. Billion-Dollar Weather and Climate Disasters (2024). Found at [https://www.ncei.noaa.gov/access/billions/events/US/2000-2024?disasters\[\]=flooding](https://www.ncei.noaa.gov/access/billions/events/US/2000-2024?disasters[]=flooding) (last accessed June 28, 2024).

² Insurance Information Institute, Which Disasters Are Covered by Homeowners Insurance? Found at <https://www.iii.org/article/which-disasters-are-covered-by-homeowners-insurance> (last accessed June 28, 2024).

NFIP's minimum standards for floodplain management.³ To be covered by an NFIP flood insurance policy, a property must be in a community that participates in the NFIP.⁴ To qualify to participate in the NFIP, a community adopts and enforces local floodplain management standards which regulate development in the Special Flood Hazard Area (SFHA).⁵ Today, over 22,600 communities in the United States participate in the NFIP.⁶

In 1990, FEMA implemented the Community Rating System (CRS) as a voluntary program for recognizing and encouraging community floodplain management activities exceeding the NFIP's minimum standards for floodplain management.⁷ Communities that undertake floodplain management activities exceeding the NFIP's minimum standards for floodplain management may apply to join the CRS program and the community will earn CRS program credits (often referred to as "points/credits") for those activities exceeding the minimum floodplain management requirements of the NFIP which are approved by FEMA. In CRS communities, credits lead to flood insurance premium discounts to reflect the reduced flood risk resulting from the community's higher floodplain management standards or programs. As of October 2023, approximately 1,500 communities participate in the CRS program nationwide.⁸ This represents about seven percent of NFIP participating communities, which represent nearly 3.6 million (more than 70 percent) of all NFIP policies that are written.⁹ CRS program discounts on flood insurance premiums range from 5 percent up to 45 percent based on the

³ 42 U.S.C. 4022(a)(1).

⁴ *Id.*

⁵ 44 CFR 59.2(b); 44 CFR 59.1 (Special Flood Hazard Area "is the land in the flood plain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHB. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE, or V").

⁶ FEMA, Flood Insurance, found at: <https://www.fema.gov/flood-insurance> (last accessed June 28, 2024).

⁷ 42 U.S.C. 4022(b); Public Law 103-325, 108 Stat. 2255 (1994) (Congress authorized the CRS program under the National Flood Insurance Reform Act of 1994).

⁸ FEMA, Communities Participating in the Community Rating System, found at [fema_cr_community-rating-system_oct-2023.xlsx](https://www.fema.gov/floodplain-management/community-rating-system) (last accessed June 28, 2024).

⁹ FEMA, Community Rating System, found at <https://www.fema.gov/fact-sheet/community-rating-system> (last accessed June 28, 2024).

level of CRS program credits awarded to communities.¹⁰

FEMA is exploring changes and improvements to the CRS program through a programmatic review and improvement effort (called "CRS Redesign"). With the continuous learning around flood, flood risk management, and flood risk reduction techniques, FEMA now has more information about, and understanding of, multi-frequency analysis, pluvial flooding, climate change, and the extent of flood risk outside of the SFHA. This new understanding has led FEMA to take a holistic look at the CRS program to determine how the program can best meet FEMA and NFIP consumer needs through the CRS Redesign.

FEMA seeks input on ways the agency can improve the CRS program, specifically: (1) to incentivize communities to take measurable actions and make sustained progress to reduce current and future flood risk; (2) to embed equity as a foundation of the CRS program; (3) to incentivize communities to encourage property owners to purchase flood insurance and thus reduce their financial exposure to flood risk; and (4) to deliver a community participant-centered and modernized program.

FEMA continually evaluates its programs, regulations, and policies to identify opportunities to modify, streamline, expand, or repeal, as appropriate. FEMA does so through legally mandated review requirements (e.g., Unified Agenda reviews and reviews under section 610 of the Regulatory Flexibility Act¹¹), through existing RFIs, and through other informal and long-established mechanisms (e.g., use of Advisory Councils, feedback from FEMA field personnel, input from internal working groups, outreach to regulated entities and the public, and Government Accountability Office program reports). This **Federal Register** notice supplements these existing extensive FEMA regulatory and program review efforts.

B. Overview of 2021 CRS RFI and Public Comments on Suggested Changes to the CRS Program

1. 2021 CRS RFI Summary

On August 23, 2021, FEMA published a request for information entitled "Request for Information on the

¹⁰ FEMA NFIP Community Rating System Coordinator's Manual at 110-3, found at <https://www.fema.gov/floodplain-management/community-rating-system#manual> (last accessed June 28, 2024).

¹¹ 5 U.S.C. 601 *et seq.*

National Flood Insurance Program's Community Rating System" in the **Federal Register**¹² (called "2021 CRS RFI"). The 2021 CRS RFI sought input from the public that would help the agency determine public interest in potential improvements to the CRS program. Specifically, the 2021 CRS RFI sought public input on broad CRS programmatic issues, such as:

- Strengths and challenges of the CRS program;
- Methods to increase equity and participation of disadvantaged communities;
- Methods to reduce flood risk to communities through the CRS program;
- Methods to incentivize participation and increase floodplain management standards;
- Methods to streamline administrative burdens, CRS program credits, and decrease program participation burdens of the CRS program;
- Methods to decrease future losses to repetitive loss structures; and
- Methods to increase collaboration and participation through cross jurisdictional entities and increase integration with other floodplain management activities, such as building standards.

2. 2021 CRS RFI Comments

FEMA received comments from 211 commenters addressing 116 unique topics in response to the 2021 CRS RFI. Commenters included private citizens; State, local, and Tribal governments; non-profit organizations; and professional associations. FEMA completed a thorough review of the comments and considered whether to explore alternative CRS program features and approaches suggested by stakeholders. Stakeholder feedback proposed a wide range of alternative program features and approaches for the CRS program. FEMA also hosted virtual public meetings to solicit input about the CRS program during the 2021 CRS RFI comment period. A non-exhaustive overview of the comments from the 2021 CRS RFI and associated public meetings is provided below:

Comments on CRS Strengths

Commenters indicated that the CRS program offers flexibility for communities to select among many CRS activities, that the CRS program has strengthened communities' floodplain management efforts, and that CRS' incentives resulted in reduced flood risk.

Comments on CRS Challenges

Commenters stated that the complexity and administrative burden of the CRS program make it difficult for communities to participate in CRS, that the CRS program raises equity concerns, and commenters questioned the degree to which the CRS incentivizes (or does not sufficiently incentivize) increases in community flood risk reduction. Commenters also expressed concern regarding CRS's alignment with the NFIP's current pricing approach and the overall affordability of NFIP flood insurance. Additionally, commenters questioned whether the CRS program is needed given the NFIP's current pricing approach which calculates actuarially based premiums, whether the CRS discount classes should be modified, and whether NFIP policy premiums will need to increase to support CRS's premium discounts.

Comments on CRS and Equity

Commenters suggested providing direct technical assistance and grant funds to underserved communities to increase CRS participation and to build local floodplain management capacity. Commenters also expressed a desire for CRS to provide more effective outreach tools for underserved communities and for a CRS scoring system that accounts for multiple aspects of a community including, but not limited to, a community's size, development density, economic status, and administrative capacity.

Commenters also suggested that CRS program credits should be shared with the community, if not fully provided to the community instead of only being provided to the policyholders as communities are doing the work to reduce flood risk. Commenters also suggested that the communities should be allowed to decide how to use the available CRS program credits, including the ability to get a cost share to support local CRS staff or mitigation funds to reduce a community's flood risk.

Comments on CRS and Future Conditions

Commenters indicated a desire to better incorporate future conditions through mapping and modeling of future risk, to incentivize communities to adopt programs related to future conditions, to create a flexible credit system for creative efforts and innovative approaches that improve communities' resilience, and for FEMA to disseminate more guidance and data to communities to better incorporate

future conditions and climate resiliency into a community's CRS program.

Comments on Floodplain Management and Flood Risk Management

Commenters stated that the CRS program should continue to support and should expand incentives for community-level action and floodplain management and to better align measurable risk reduction in communities of both current and future risks with program incentives (*e.g.*, creditable activities and discounts). Commenters also suggested that FEMA should continue to incentivize effective floodplain management and community involvement through more effective outreach, technical assistance, capability-building, and funding to support floodplain management efforts in the CRS program.

Commenters also suggested that CRS activities and credits should be limited to those activities that lower flood risk and result in development that is less susceptible to flooding. Commenters noted that the cost of CRS to the NFIP is too high, that credits must be given more carefully, and that enforcement of compliance with NFIP minimum floodplain management requirements within CRS communities must be improved. Commenters noted that many CRS activities and credits are unrelated to flood risk reduction, such as providing credits to incentivize community activities to protect endangered species.

Comments on CRS Simplification

Commenters requested simplification of the CRS program application process and simplification of CRS credits and activities. Commenters suggested that the document submittal procedures to initially join the CRS program and the scoring system in the CRS Coordinator's Manual should be simplified to increase transparency. Commenters also suggested that the CRS activities should be simplified by reducing the number of activities that receive credit to allow communities to focus on activities that result in the largest flood risk reduction (*e.g.*, higher elevation standards or limiting development in the SFHA).

Comments on CRS Collaboration, Integration, and Alignment

Comments suggested that FEMA should establish a grant program to fund local CRS positions or establish a cost-share program across multiple municipalities to support CRS implementation. Commenters also suggested the FEMA should increase the sharing of success stories and best practices among CRS participating

¹² 86 FR 47128 (Aug. 23, 2021).

communities and allow multi-jurisdictional or regionalized activities/elements where communities could work together to submit regional documentation allowing multi-jurisdictional partnerships to make CRS more accessible (e.g., communities could work together through a multi-jurisdictional entity to regionally implement the CRS program).

Commenters also suggested that the CRS should be fully integrated into the NFIP by reimagining the NFIP's current pricing approach and enrolling all communities into the CRS program as part of NFIP participation starting at a CRS class 0 if the community only meets the NFIP minimum floodplain management standards. Under this suggestion, communities could move up in CRS class rating to increase their CRS discount with a maximum discount of up to a 50%. Commenters also suggested that a community should also be penalized for actions that increase flood risk in the community (e.g., such as allowing violations of adopted floodplain management development standards) down to a CRS negative class with corresponding premium surcharges on all NFIP policies in that community.

C. Overview of GAO-23-105977 Report's Findings and Agency Recommendations

On July 31, 2023, the Government Accountability Office (GAO) issued report number GAO-23-105977, *Flood Insurance: FEMA's New Rate-Setting Methodology Improves Actuarial Soundness but Highlights Need for Broader Program Reform*.¹³ GAO-23-105977 included the following two FEMA agency recommendations relating to improving the CRS program:

- The Assistant Administrator of FEMA's Federal Insurance Directorate (FID) should adjust CRS by calculating a community's rating based only on community activities that reduce flood risk and by incorporating discounts into the full-risk premium based on the actuarial evaluation of risk reduction. (Recommendation 1); and
- The Assistant Administrator of FEMA's FID should evaluate other means for incentivizing desirable community activities that cannot be actuarially justified but are currently a basis for discounts in CRS. (Recommendation 2).

The GAO-23-105977 report stated that the premium discounts provided

under the CRS program are not actuarially justified and are paid for, in large part, through a cross-subsidization by NFIP policyholders that are not receiving the CRS discount. The GAO-23-105977 report also stated that it is likely that policyholders receiving CRS discounts are paying lower premiums that do not fully reflect their flood risk. The amounts of CRS discounts—both to individual properties and program wide—are not closely linked to potential loss reduction of currently insured properties. While the activities that FEMA promotes through CRS are important, few of them directly mitigate flood risk to the property. For example, the GAO-23-105977 report noted that the CRS discounts related to public information, warning and response, and mapping and regulations do not reduce the potential for flood loss to currently insured properties. The GAO-23-105977 report also stated that the NFIP's new pricing approach accounts for some individual premium rating variables, such as a structure's elevation in relation to flood sources, which are also included in CRS' community-wide activities and credits. This may result in NFIP double counting risk reduction techniques/measures during rating and discount determination and policyholders in certain CRS communities receiving a CRS discount that is not based on the actuarial reduction of flood risk to currently insured properties.

II. Maximizing the Value of Public Feedback

The impacts of Federal regulations and policies tend to be widely dispersed on society. Members of the public are likely to have useful information, data, and perspectives on the benefits and burdens of FEMA's existing programs, regulations, information collections, and policies. FEMA seeks additional public feedback relevant to FEMA's potential redesign and improvement efforts for the CRS program given the 2021 CRS RFI comments and the findings and agency recommendations summarized above from the GAO-23-105977 report.

The following is meant to assist members of the public in formulating comments. This notice contains a list of questions, the answers to which will assist FEMA in understanding which suggested alternative program features and approaches CRS program stakeholders support or oppose and why. FEMA encourages public comment on these questions and seeks any other national-level data commenters believe are relevant to FEMA's CRS redesign efforts. Commenters should identify, with specificity, the program feature,

policy, or process at issue. Below are recommendations for commenters to use when making comments in response to this RFI, so that FEMA can better evaluate the suggested changes to the CRS program:

- Commenters should explain, with as much detail as possible, why an aspect of the CRS program should be modified, streamlined, expanded, or repealed, and provide specific suggestions of ways the agency can better achieve its objectives;
- Commenters should provide specific national-level data that document the costs, burdens, and benefits of potentially new requirements to the extent they are available. Commenters might also address how FEMA can best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of a redesigned CRS program and whether there are existing sources of data that FEMA can use to evaluate the effects of the CRS program over time; and,
- Commenters should identify with specificity administrative burdens, CRS program requirements, information collection burdens, waiting time, or unnecessary complexity that may impose unjustified barriers in general, or that may have adverse effects on equity for all, including those in underserved communities.

III. Specific Information Requested

FEMA seeks comments on all suggested program features of a redesigned CRS program, and specifically, FEMA has additional follow-up questions from the 2021 CRS RFI on suggested CRS program changes. FEMA's goal is to obtain diverse feedback on the CRS program that helps inform FEMA decision-making on the future of the CRS program.

List of Questions for Commenters

(1) Should FEMA provide each community with a report highlighting potential CRS program credits (often referred to as "points/credits") that the community could earn to mitigate risk and reduce insurance premiums, explaining strategies on how to receive more points, and flagging NFIP minimum floodplain management standards compliance issues? Why or why not?

(2) Should FEMA auto enroll all NFIP participating communities into the CRS program to give the community CRS credit for activities that they already undertake that exceed NFIP minimum floodplain management standards (e.g., community has an open space preservation program to reduce flooding)? Auto enrollment means all

¹³ GAO-23-105977, *Flood Insurance: FEMA's New Rate-Setting Methodology Improves Actuarial Soundness but Highlights Need for Broader Program Reform*, found at <https://www.gao.gov/products/gao-23-105977> (last accessed June 28, 2024).

communities would automatically participate in CRS by virtue of participating in the NFIP.

(3) Would there be any advantage if FEMA were to assess an escalating surcharge on NFIP policy premiums for NFIP participating communities that are not in compliance with the NFIP minimum floodplain management standards? This would be in addition to the NFIP Probation policy surcharge that is in 44 CFR 59.24(b).

(4) What are the advantages and/or disadvantages of providing technical assistance to communities to support CRS participation? Would communities take advantage of technical assistance and if so, what type(s) of technical assistance would be most helpful? Examples of suggested technical assistance include assisting communities with the preparation of required CRS documents, CRS project management, CRS program support, and preparation of repetitive loss analysis.

(5) FEMA currently offers premium discounts for many CRS activities through the NFIP's current pricing approach. In CRS participating communities, this may lead to policyholders receiving "double" discounts for the same CRS activities (e.g., elevation of individual structure above the NFIP's minimum elevation requirement resulting in a structure level discount through the NFIP's current pricing approach and a CRS credit for a community-wide higher structure elevation regulation).

(a) If FEMA were to provide NFIP premium discounts to individual policyholders for CRS activities, through the NFIP's current pricing approach, should FEMA offer duplicate CRS discounts for the same activities that are already reflected in individual premiums? Why or why not?

(b) Assuming no to (a), would communities be incentivized to adopt measures in excess of FEMA's minimum floodplain management standards for community-wide activities that reduce future flood risk (e.g., stormwater management regulations or enhanced future land use planning) if FEMA were to only offer CRS discounts for those community-wide activities that reduce future flood risk?

(6) Are there additional community-level activities that are not currently included in the CRS program that measurably reduce flood risk to property? Please describe and, if available, provide national-level data that demonstrate how the activities measurably reduce current and/or future flood risk reduction to property.

(7) Would a participating CRS community be willing to exchange CRS

insurance policyholder premium discounts (e.g., all, some, or none) in a community for other comparable community-level benefits, such as enhanced technical assistance for the local CRS program or capacity-building grants? For example, if the aggregate amount of CRS discounts offered to individuals in the community totals \$100,000, would the community be interested in redistributing the total individual CRS discounts (e.g., \$100,000) among the community and the individual policyholders (e.g., \$50,000 to the community for enhanced technical assistance grants and \$50,000 to be distributed to individual policyholders in the form of CRS discounts)? By redistributing the CRS insurance policyholder premium discount benefits from the policyholders to the community, there would be a potential for both wider risk reduction and larger financial benefit to the community. Would such an approach make non-participating CRS communities more inclined to join the CRS program?

(8) Besides individual flood insurance financial premium discounts, what other benefits would best incentivize communities to maintain participation in or to join the CRS program?

(9) The current CRS program credits 19 activities and 90+ elements recognized by the CRS program and identified in the *CRS Coordinator's Manual* along with the credit points assigned to each activity. An activity is a floodplain management activity for which CRS credit has been established (e.g., mapping and regulations—higher regulatory standards). Elements are discrete parts of an activity that if implemented result in CRS credit points under that activity (e.g., community-wide prohibition of outdoor storage in the SFHA, which is an element of the activity of higher regulatory standards). What are some advantages and/or disadvantages of reducing the number of activities and elements, and streamlining CRS reporting requirements?

(10) What are the advantages and/or disadvantages of communities working with other communities to implement CRS under a regional approach? For example, a regional approach may include a regional watershed or planning commission that implements a CRS program for multiple communities or a shared CRS coordinator position among several communities.

(11) What else should FEMA consider for potential improvements to the CRS program and how can FEMA better engage with stakeholders to effectively implement the CRS program?

FEMA notes that this notice is issued solely for information and program-planning purposes. The suggested approaches do not reflect an agency position or official action. Responses to this notice do not bind FEMA to any further actions related to the response.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024-15271 Filed 7-10-24; 8:45 am]

BILLING CODE 9111-47-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0099]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for T Nonimmigrant Status, Application for Derivative T Nonimmigrant Status, and Declaration for Trafficking Victim

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 12, 2024.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS-2006-0059. All submissions received must include the OMB Control Number 1615-0099 in the body of the letter, the agency name and Docket ID USCIS-2006-0059.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721-3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for

questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS Contact Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Comments

DHS previously published an information collection notice for within the Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status (RIN 1615-AA59) final rule in the **Federal Register** on April 30, 2024, at 89 FR 34864, allowing for a 60-day public comment period. USCIS did receive 3 comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at <http://www.regulations.gov> and enter USCIS-2011-0010 in the search box. Comments must be submitted in English, or an English translation must be provided. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) 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;

(2) 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;

(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, 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for T Nonimmigrant Status, Application for Derivative T Nonimmigrant Status, and Declaration for Trafficking Victim.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I-914; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households. Form I-914 permits victims of a severe form of trafficking in persons and certain eligible family members to demonstrate that they qualify for temporary nonimmigrant status pursuant to the Victims of Trafficking and Violence Protection Act of 2000, and to receive temporary immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I-914, 1,310 responses at 2.63 hours per response; Form I-914, Supplement A, 1,120 responses at 1.083 hours per response; Form I-914, Supplement B (section that officer completes), 459 responses at 3.58 hours per response; Form I-914, Supplement B (section that respondent completes), 459 responses at .25 hours per response. Biometric processing 2,430 respondents requiring Biometric Processing at an estimated 1.17 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 9,261 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$2,532,300.

Dated: July 8, 2024.

Samantha L. Deshommès,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024-15273 Filed 7-10-24; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038220; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: Minnesota Historical Society, St. Paul, MN

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Minnesota Historical Society intends to repatriate a certain cultural item that meets the definition of an unassociated funerary object and sacred object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after August 12, 2024.

ADDRESSES: Cecily Marcus, Minnesota Historical Society, 345 West Kellogg Boulevard, Saint Paul, MN 55102, telephone (651) 259-3123, email cecily.marcus@mnhs.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Minnesota Historical Society, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one item, determined by MNHS and Native American consultants to be both an Unassociated Funerary Object and a Sacred Object, is the noose used to execute Wicanhpi Wastedanpi (Good Little Stars, or, Chaske), also known as the "Mankato Hanging Rope" (MNHS #3333.H474). Wicanhpi Wastedanpi was one of the 38 Dakota men hanged on December 26, 1862 in Mankato, MN.

Museum records indicate the noose was removed from the neck of Wicanhpi Wastedanpi by Army Adjutant J.K. Arnold after the hangings, and donated by him to MNHS in 1869. The cultural affiliation of the item is to all federally recognized U.S. Dakota Tribes as determined by museum records and consultation with tribal representatives. No potentially hazardous substances are known to have been used to treat this item.

Determinations

The Minnesota Historical Society has determined that:

- The one unassociated funerary object described in this notice is reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- The one sacred object described in this notice is specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- There is a reasonable connection between the cultural item described in this notice and the Prairie Island Indian Community in the State of Minnesota.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after August 12, 2024. If competing requests for repatriation are received, the Minnesota Historical Society 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 Minnesota Historical Society is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15198 Filed 7-10-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038224; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: Field Museum, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum intends to repatriate certain cultural items that meet the definition of sacred objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after August 12, 2024.

ADDRESSES: June Carpenter, NAGPRA Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665-7820, email jcarpenter@fieldmuseum.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of three cultural items have been requested for repatriation. The three sacred objects are a pipe, a pipe

and pipe case, and a dance hat. They were collected in 1900 by Stewart Culin in the Hoopa Valley. At the request of the Wiyot Tribe the cultural items were tested to determine whether they had been treated with contaminants. Trace amounts of bromine were found on the pipe case. Its presence may be due to a past pesticide application or may be due to the once live animal's exposure to bromine in its natural environment. There is no known presence of other potentially hazardous substances.

Determinations

The Field Museum has determined that:

- The three sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Wiyot Tribe, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after August 12, 2024. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15202 Filed 7-10-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038223;
PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Louisiana State University, Museum of Natural Science, Baton Rouge, LA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Louisiana State University, Museum of Natural Science (LSUMNS) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after August 12, 2024.

ADDRESSES: Dr. Irene Martí Gil, LSU Museum of Natural Science, 119 Foster Hall, LSU, Baton Rouge, LA 70803, telephone (225) 578-2855, email imart23@lsu.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 LSUMNS, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 19 individuals have been reasonably identified. No known individuals were identified. No associated funerary objects are present.

From the Toups Place site (16LF001, located on the east bank of West Fork Bayou L'Ours in Lafourche Parish, LA), human remains representing, at a minimum, one adult individual, were removed as part of a surface collection by Tommy Ryan in 1984. The burial could be Troyville, Coles Creek, or Plaquemine/Mississippian.

From the South Point site (16OR12, located on the south shore of Lake Pontchartrain in Orleans Parish, LA) human remains representing, at a minimum, two adult individuals, were removed in two episodes of surface collection by Sherwood Gagliano, probably between 1963 and 1965. The burials could be Tchefuncte, Troyville, Coles Creek, or Mississippian.

From the Bayou Biloxi site (16SB53, located at the junction of Bayou Biloxi and Southwest Branch in St. Bernard Parish, LA), human remains representing, at a minimum, one individual, were removed by Robert Treadwell during a surface collection on August 23, 1952, in the context of McIntire's Prehistoric Indian Settlements of the Changing Mississippi River Delta survey project. The burial is considered Coles Creek-Plaquemine, and Mississippian.

From the Bayou La Loutre site (16SB68, located west of Bayou La Loutre in St. Bernard Parish, LA), human remains representing, at a minimum, two adult individuals, were removed by Robert Neuman during a surface collection in 1976. The burial is considered Coles Creek or Mississippian.

From the 16SB103 site (this site, northwest of "Sundown Island," in St. Bernard Parish, LA, was never given a name), human remains representing, at a minimum, three adult individuals, were removed by Eric Lacefield in 1980 and by Robert Neuman, Phillip "Duke" Rivet, Kathleen Byrd, and Eric Lacefield in 1984 in surface collections. The burials are considered Coles Creek or Mississippian.

From the 16SC00 site (this site, located in the Lake Salvador area, in St. Charles Parish, LA, was never given a name), human remains representing, at a minimum, two individuals were removed by Forest Travirca in the 1970s. Mr. Travirca donated the materials from these surface collections to the LSUMNS in 1993. The individuals included one adult and one subadult, possibly a teenager. The burials are considered "Prehistoric Unknown" and Plaquemine/Mississippian.

From the Bois Chactas site (16SC4, located on the northwestern shore of Lake Salvador, in St. Bernard Parish, LA) human remains representing, at a minimum, three individuals, were removed by Robert Neuman during a surface collection in 1969. The collection included two adults and one subadult. The burials are considered Coles Creek, Plaquemine, and/or Mississippian.

From the Chaudiere Casse site (16SC8, located on the southeastern side of Lake Salvador in St. Charles Parish, LA), human remains representing, at a minimum, one adult individual, were removed by Forest Travirca during a surface collection in the 1970s. Mr. Travirca donated his collection from the site to the LSUMNS in 1994. The burials are considered Coles Creek, Plaquemine, and/or Mississippian.

From the Bayou Trepagnier site (16SC10, located on the west bank of Bayou Trepagnier in St. Charles Parish, LA), human remains, representing at a minimum, one individual, were removed by Sherwood Gagliano and Roger Saucier during a surface collection in 1951. The burials are considered Tchefuncte, Marksville, and possibly Mississippian.

From the Bayou Lacombe site (16ST30, located on the east bank of Bayou Lacombe in St. Tammany Parish, LA), human remains, representing, at a minimum, one adult individual, were removed in two surface collection episodes: the first in 1968, probably by Roger Saucier; the second by Phillip Rivet in 1974. The burials are considered Tchefuncte, Marksville, or Mississippian.

From the Somerset Mound (16TE7, also LMS 24-L-2, located on a natural levee of the Mississippi River in Tensas Parish, LA), human remains representing, at a minimum, two adult individuals, were removed by Robert Neuman, George Percy, and Fred (?) Smith in 1969 during a surface collection. The burials are considered Plaquemine or Late Mississippian.

The prehistoric material, including Tchefuncte, Troyville, Coles Creek, Plaquemine, and "unknown," removed from the sites above is culturally affiliated with the Chitimacha, while the Mississippian material is most likely culturally affiliated with the Choctaw.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The LSUMNS has determined that:

- The human remains described in this notice represent the physical remains of 19 individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Chitimacha Tribe of Louisiana; Jena Band of Choctaw Indians; Mississippi Band of Choctaw

Indians; and The Choctaw Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 12, 2024. If competing requests for repatriation are received, LSUMNS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The LSUMNS is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15201 Filed 7-10-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038226;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: The Henry Ford, Dearborn, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), The Henry Ford intends to repatriate certain a cultural item that meets the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after August 12, 2024.

ADDRESSES: Laura Myles, The Henry Ford, 20900 Oakwood Boulevard, Dearborn, MI 48124, telephone (313) 203-4757, email lauram@thehenryford.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of The Henry Ford, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one object of cultural patrimony is a silver gorget. This gorget was purchased in 1959; however further acquisition information is unknown. Affiliation was assumed based on the inscription, "MOHICKANS," and confirmed through consultation. No treatments have been documented; hazardous treatments have not been historically used at The Henry Ford.

Determinations

The Henry Ford has determined that:

- The one object of cultural patrimony described in this notice has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural item described in this notice and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after August 12, 2024. If competing requests for repatriation are received, The Henry Ford must determine the

most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Henry Ford is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15204 Filed 7-10-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038218;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Intended Repatriation: San Francisco State University NAGPRA Program, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the San Francisco State University (SF State) NAGPRA Program intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after August 12, 2024.

ADDRESSES: Elise Green, San Francisco State University NAGPRA Program, 1600 Holloway Avenue, San Francisco, CA 94132, telephone (415) 405-3545, email egreen@sfsu.edu.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the SF State NAGPRA Program, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 86 cultural items have been requested for repatriation. The 86 lots of unassociated funerary objects are soil samples, shells, basalt choppers, basalt core, basalt flakes, scrapers, assorted rocks, charcoal, pottery fragments, chert point, shell, obsidian points, glass fragments, Olivella bead, stones, square nail, faunal bones, a mortar, and a pestle. CA-TEH-20, CA-TEH-UNK, and CA-TEH-24 are part of the Tehama-Colusa Canal Survey located in the Corning Quadrangle in Corning, California. CA-TEH-Sacramento River archaeological site collection was donated by Adan E. Treganza to the now defunct Treganza Anthropology Museum. Treganza probably surface collected from various sites in Tehama County when working on the Tehama-Colusa Canal projects in 1950s–60s. There are no other records for CA-TEH-Sacramento River at SF State. The survey abstract indicates that these sites are affiliated with the Central Wintun, whose aboriginal occupation of the surrounding areas is well-documented in the ethnographic literature.

It was once common practice by museums to use chemicals on cultural items to prevent deterioration by mold, insects, and moisture. To date, the SF State NAGPRA Program has no records documenting use of chemicals at our facilities, and we currently do not use chemicals on any cultural items. A former SF State professor, Dr. Michael Moratto, stated that staff used glues, polyvinyl acetate, and a solution called Glyptol to mend and stabilize cultural objects in the past. Prior non-invasive and non-destructive hazardous chemical tests conducted at the SF State NAGPRA Program repositories show arsenic, mercury, and/or lead in some storage containers, surfaces, and certain cultural items.

Determinations

The SF State NAGPRA Program has determined that:

- The 86 lots of unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or

burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

- There is a reasonable connection between the cultural items described in this notice and the Grindstone Indian Rancheria of Wintun-Wailaki Indians of California and the Paskenta Band of Nomlaki Indians of California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after August 12, 2024. If competing requests for repatriation are received, the SF State NAGPRA Program must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The SF State NAGPRA Program is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15196 Filed 7-10-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038227;
PPWOCRADNO-PCU00RP14.R50000]

Notice of Inventory Completion: Maxey Museum, Whitman College, Walla Walla, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Maxey Museum, Whitman College has completed an inventory of human

remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 12, 2024.

ADDRESSES: Libby Miller, Maxey Museum, Whitman College, 345 Boyer Avenue, Walla Walla, WA 99362, telephone: (509) 876-7327, email millerem@whitman.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 Maxey Museum, Whitman College, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Human remains representing, at minimum, one individual have been identified. The one associated funerary objects is one lot of copper beads and string. The human remains consist of a large adult mandible with four extremely worn teeth. Collected by Myron Eells between 1874 and 1907. Exact location unknown. Eells occasionally noted tribal affiliation and/or places of origin, as here it appears as "Clallam" (Klallam). The AFOs are listed in accession records as "Hudson's Bay Company, from graves, Sequim, Washington. Clallam". Donated to Whitman in 1906 or 1907 at the time of Eells' death.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The Maxey Museum at Whitman College has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The one lot of objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• There is a connection between the human remains and associated funerary objects described in this notice and the Jamestown S'Klallam Tribe.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. The Indian Tribe identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after August 12, 2024. If competing requests for repatriation are received, the Maxey Museum, Whitman College 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 Maxey Museum, Whitman College is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15205 Filed 7-10-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038225; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: Bryn Mawr College, Bryn Mawr, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Bryn Mawr College intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after August 12, 2024.

ADDRESSES: Marianne Weldon, Bryn Mawr College, 101 N Merion Avenue, Bryn Mawr, PA 19010, telephone (610) 526-5022, email mweldon@brynmawr.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 Bryn Mawr College, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 218 cultural items have been requested for repatriation. The 218 unassociated funerary objects are adzes, axes, bannerstones, beads, Bodkin knives, celts, celts or axes, celts or chisels, chisels, discoidal, drills, earthenware pipes, gorgets, net sinkers, net sinkers or hammerstones, notched disks, notched stones or sinkers, pendants, pestles, pipes, plummet, projectile points, a string of beads, worked pebbles, a notched stone with sinkers, an adze or axe, an axe or pick, a biface blade knife, a bird effigy pipe bowl fragment, a bowl, a chisel or gouge, an effigy of a fish, an effigy pipe, a gorget fragment, a gorget or effigy, a gouge, a graver or auger, a hammerstone, a hand axe, a knife or scraper, a necklace, a notched slab, a pebble bead, a pebble chipped for axe or sinker, a pendant or partial gorget, a pendant or sinker, a point or scraper, a sherd, a sinew stone, a stone bead, and a stone tool. These cultural items were removed from Massachusetts, New Jersey, New York, Pennsylvania, and the Delaware Water Gap. In 1882, William Sansom Vaux bequeathed a collection to the Academy of Natural Sciences (ANS), and ANS accessioned them on June 27, 1912. In 1961, ANS loaned approximately 3,000 items to Bryn Mawr College, including the items described in this notice. In 1997, the ANS board voted to transfer control of the items to Bryn Mawr College, and in 1998, it executed the paperwork.

Determinations

Bryn Mawr College has determined that:

• The 218 unassociated funerary objects described in this notice are reasonably believed to have been placed

intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

• There is a reasonable connection between the cultural items described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Muncie Community, Wisconsin.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after August 12, 2024. If competing requests for repatriation are received, Bryn Mawr College 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. Bryn Mawr College is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15203 Filed 7-10-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS–WASO–NAGPRA–NPS0038222;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Southeast Archeological Center, Tallahassee, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Southeast Archeological Center (SEAC, part of the Southeast Regional Office's Cultural Resources, Partnerships, and Science Division) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after August 12, 2024.

ADDRESSES: Julie H. Ernstein, Division Manager, Cultural Resource Partnerships and Science Division, National Park Service, Interior Region 2: South Atlantic—Gulf, 100 Alabama Street SW, Atlanta, GA 30303, telephone (404) 909–2240, email julie_ernstein@nps.gov.

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 SEAC, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records.

Abstract of Information Available

Based on the information available, human remains representing, at least, five individuals have been reasonably identified. The 153 associated funerary objects are three greenstone ceremonial celts, two quartz hammerstones, one pitted stone, four whetstones, one piece of petrified wood, four ceramic discs, three stone discs, 14 ceramic sherds, one elbow fragment of a biconical clay pipe, four bone awls, one antler tip, one flat faunal bone, 107 shell beads, one deer bone, three reconstructed ceramic pots, and three reconstructed ceramic water bottles.

On an unknown date prior to 1940, human remains and associated funerary objects were removed from Moundville in Hale and Tuscaloosa Counties, AL. These individuals and objects were collected or purchased by James Milton Mallory over an unknown period of time. The associated funerary objects were first inventoried on April 27, 1932, by the Alabama Museum of Natural History. Following Mr. Mallory's demise in 1940, the individuals and objects entered Works Projects Administration (WPA) collections and were later transferred to National Park Service collections after the WPA ceased in 1943.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

SEAC has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- The 153 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Kialegee Tribal Town; Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows,

by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after August 12, 2024. If competing requests for repatriation are received, SEAC 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. SEAC is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15200 Filed 7–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS–WASO–NAGPRA–NPS0038219;
PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Town of Germantown, Germantown, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Town of Germantown has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after August 12, 2024.

ADDRESSES: Thomas Shannon, Town Historian, Germantown Town Hall, 50 Palatine Park Road, Germantown, NY 12526, telephone (518) 822–7908, email germantownhistory@gmail.com.

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 Town of Germantown, and additional information on the determinations in

this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. The individual's remains were disturbed in 1990 during the excavation and expansion of 45 Moore Road, Town of Germantown, Columbia County, New York, which overlooks the Hudson River. The Columbia County Sheriff's Department opened an investigation (Case 6641-90). On August 8, 1990, a Columbia County Sheriff's Department investigator brought the remains to the Onondaga County Medical Examiner's Office for analysis. After William C. Rodriguez, III, Ph.D., completed his analysis, the remains were stored at the Onondaga County Medical Examiner's Office until May 1, 1991, when they were returned to the Columbia County Sheriff's Office. Sometime after that, they were brought to the Town of Germantown Records Retention Room, where they have been since. The Town Historian discovered the individual's remains in the records retention room on January 13, 2024. According to the report, the remains contain portions of the cranium, distal portions of the left and right humeri, proximal end of the right ulnae, right tibial mid-shaft, superior portions of the left and right scapula, superior half of the left innominate, both femurs, rib fragments, right temporal and parietal bone portions, assorted phalanges of the feet, right half of the mandible, including 1st and 2nd molars, maxilla.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The Town of Germantown has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after August 12, 2024. If competing requests for repatriation are received, the Town of Germantown must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Town of Germantown is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024-15197 Filed 7-10-24; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0038221; PPWOCRADNO-PCU00RP14.R50000]

Notice of Intended Repatriation: U.S. Department of the Interior, Fish and Wildlife Service, Klamath Falls, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after August 12, 2024.

ADDRESSES: Spencer Lodge, USFWS, 1936 California Avenue, Klamath Falls, OR 97601, telephone (541) 885-8481, email spencer_lodge@fws.gov.

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 USFWS, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 1,949 cultural items have been requested for repatriation. The 1,949 unassociated funerary objects are projectile points, stone tools, bone objects, cordage fragments, basketry fragments, tule knots, stone flakes, shell, faunal remains, wood, coprolites, botanical remains, charcoal, ash, stick objects, groundstone, beads, glass fragment, and a fishing weight.

Objects described above were removed from Siskiyou County, CA by R.J. Squier and Gordon L. Grosscup during archaeological excavations occurring between 1952-1954. Excavations took place at two national wildlife refuges (NWR) operated by the USFWS, Tule Lake and Lowe Klamath NWR, where these objects were removed from four sites (CA-Sis-2, CA-Sis-108, CA-Sis-223, CA-Sis-239). These objects have been curated at the Phoebe A. Hearst Museum at the University of California Berkeley since their removal.

Determinations

The USFWS has determined that:

- The 1,949 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

• There is a reasonable connection between the cultural items described in this notice and the Klamath Tribes and Modoc Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after August 12, 2024. If competing requests for repatriation are received, the USFWS 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 USFWS is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: June 26, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–15199 Filed 7–10–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–592 and 731–TA–1400 (Review)]

Plastic Decorative Ribbon From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (“the Act”) to determine whether revocation of the antidumping duty order and countervailing duty order on plastic decorative ribbon from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: May 6, 2024.

FOR FURTHER INFORMATION CONTACT:

Alexis Yim (202–708–1446), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On May 6, 2024, the Commission determined that the domestic interested party group response to its notice of institution (89 FR 6540, February 1, 2024) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on July 31, 2024. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission’s rules.

Written submissions.—As provided in § 207.62(d) of the Commission’s rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,² and any party

¹ A record of the Commissioners’ votes, the Commission’s statement on adequacy, and any individual Commissioner’s statements will be available from the Office of the Secretary and at the Commission’s website.

² The Commission has found the responses submitted on behalf of Berwick Offray, LLC to be

other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before 5:15 p.m. on August 8, 2024 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by August 8, 2024. However, should the Department of Commerce (“Commerce”) extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce’s final results is three business days after the issuance of Commerce’s results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission’s procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Act; this notice is published pursuant to § 207.62 of the Commission’s rules.

By order of the Commission.

Issued: July 5, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–15222 Filed 7–10–24; 8:45 am]

BILLING CODE 7020–02–P

individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[USITC SE-24-030]

Sunshine Act Meetings**AGENCY HOLDING THE MEETING:** United States International Trade Commission.**TIME AND DATE:** July 16, 2024 at 11:00 a.m.**PLACE:** Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205-2000.**STATUS:** Open to the public.**MATTERS TO BE CONSIDERED:**

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701-TA-582 and 731-TA-1377 (Review) (Ripe Olives from Spain). The Commission currently is scheduled to complete and file its determinations and views of the Commission on August 5, 2024.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202-205-2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission.

Issued: July 9, 2024.

Sharon Bellamy,*Supervisory Hearings and Information Officer.*

[FR Doc. 2024-15359 Filed 7-9-24; 4:15 pm]

BILLING CODE 7020-02-P**DEPARTMENT OF LABOR****Employee Benefits Security Administration****Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies**

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), consisting of 15 members appointed by the Secretary of Labor (the Secretary) as follows:

- Three representatives of employee organizations (at least one of whom

shall be a representative of an organization whose members are participants in a multiemployer plan);

- three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans);
- three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan); and
- one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting.

No more than eight members of the Council shall be members of the same political party.

Council members must be qualified to appraise the programs instituted under ERISA. Appointments are for three-year terms. The Council's prescribed duties are to advise the Secretary with respect to carrying out their functions under ERISA, and to submit to the Secretary, or their designee, related recommendations. The Council will meet at least four times each year.

The terms of five Council members expire at the end of this year. The groups or fields they represent are as follows:

- (1) Employee organizations;
- (2) employers;
- (3) the general public;
- (4) actuarial counseling; and
- (5) investment counseling.

The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse Council. Selection of Council membership will be consistent with achieving the greatest impact, scope, and credibility among diverse stakeholders. The diversity in such membership includes, but is not limited to, race, gender, disability, sexual orientation, and gender identity.

If you or your organization wants to nominate one or more people for appointment to the Council to represent one of the groups or fields specified above, submit nominations to George Pantazopoulos, Council Executive Secretary, as email attachments to ERISAA AdvisoryCouncil@dol.gov or by mail to U.S. Department of Labor, 200 Constitution Ave. NW, Suite N-5623, Washington, DC 20210. Nominations must be received on or before August 26, 2024. If sending electronically, please use an attachment in rich text, Word, or pdf format. If sending by regular mail, please allow three weeks for mail delivery to the Department of Labor. Nominations may be in the form of a letter, resolution, or petition signed by the person making the nomination

or, in the case of a nomination by an organization, by an authorized representative of the organization. The Department of Labor encourages you to include additional supporting letters of nomination. The Department of Labor will not consider self-nominees who have no supporting letters.

Nominations, including supporting letters, should:

- State the person's qualifications to serve on the Council (including any particular specialized knowledge or experience relevant to the nominee's proposed Council position);
- state that the candidate will accept appointment to the Council if offered;
- include which of the five positions (representing groups or fields) you are nominating the candidate to fill;
- include the nominee's full name, work affiliation, mailing address, phone number, and email address;
- include the nominator's full name, work affiliation, mailing address, phone number, and email address;
- include the nominator's signature, whether sent by email or otherwise.

Please do not include any information that you do not want publicly disclosed.

The Department of Labor will contact nominees for information on their political affiliation and their status as registered lobbyists. Anyone currently subject to federal registration requirements as a lobbyist is not eligible for appointment. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Council. Historically, this has meant a commitment of at least 20 days per year. The Department of Labor has a process for vetting nominees under consideration for appointment.

Signed at Washington, DC, this 5th day of July, 2024.

Lisa M. Gomez,*Assistant Secretary, Employee Benefits Security Administration.*

[FR Doc. 2024-15189 Filed 7-10-24; 8:45 am]

BILLING CODE 4510-29-P**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES****National Endowment for the Arts****30-Day Notice for the "NEA Panelist Profile Data"**

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of proposed collection; comment request.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing

effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of NEA panelist profile data. A copy of this ICR, with applicable supporting documentation, may be obtained by visiting www.Reginfo.gov.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below within 30 days from the date of this publication in the **Federal Register**.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is particularly interested in comments which: (1) 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; (2) 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; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Could help minimize the burden of the collection of information on those who are to respond, including through the use of electronic submission of responses through *Grants.gov*.

Agency: National Endowment for the Arts.

Title: NEA Panelist Profile Data Collection.

OMB Number: 3135-0098.

Frequency: Annually.

Affected Public: Individuals.

Estimated Number of Respondents: 1,000.

Total burden hours: 167 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

The NEA's mission is to "foster and sustain an environment in which the arts benefit everyone in the United States." With the advice of the National Council on the Arts and advisory panels, the NEA Chair establishes eligibility requirements and criteria for the review of applications for funding. Section 959(c) of the NEA's enabling legislation, as amended, directs the Chair to utilize advisory panels to review applications and to make recommendations to the National Council on the Arts, which in turn makes recommendations to the Chair.

The legislation requires the Chair "(1) to ensure that all panels are composed, to the extent practicable, of individuals reflecting a wide geographic, ethnic, and minority representation as well as to (2) ensure that all panels include representation of lay individuals who are knowledgeable about the arts" These panels are considered to be committees under the Federal Advisory Committee Act (FACA), which also requires that committees be balanced geographically and ethnically. In addition, the membership of each panel must change substantially from year to year and each individual is ineligible to serve on a panel for more than three consecutive years. To assist with efforts to meet these legislated mandates regarding representation on advisory panels, the NEA has established a database of names, addresses, areas of expertise and other basic information on individuals who are qualified to serve as panelists for the NEA.

The Panelist Profile Data Collection, for which clearance is requested, is used to gather basic information from qualified individuals recommended by the arts community; arts organizations; Members of Congress; the general public; local, state and regional arts organizations; NEA staff, and others.

Dated: July 8, 2024.

Daniel Beattie,

*Director of Guidelines and Panel Operations,
National Endowment for the Arts.*

[FR Doc. 2024-15265 Filed 7-10-24; 8:45 am]

BILLING CODE 7537-01-P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Occupational Safety and Health Review Commission (OSHRC) is revising the notice for Privacy Act system-of-records OSHRC-5.

DATES: Comments must be received by OSHRC on or before August 12, 2024. The revised system of records will become effective on that date, without any further notice in the **Federal Register**, unless comments or government approval procedures necessitate otherwise.

ADDRESSES: You may submit comments by any of the following methods:

- *Email:* OSHRC_Privacy@oshrc.gov. Include "PRIVACY ACT SYSTEM OF RECORDS" in the subject line of the message.

- *Mail:* One Lafayette Centre, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.

- *Hand Delivery/Courier:* same as mailing address.

Instructions: All submissions must include your name, return address, and email address, if applicable. Please clearly label submissions as "PRIVACY ACT SYSTEM OF RECORDS."

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Senior Attorney-Advisor, Office of the General Counsel, via telephone at (202) 606-5410, or via email at OSHRC_Privacy@oshrc.gov.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, 5 U.S.C. 552a(e)(4), requires Federal agencies such as OSHRC to publish in the **Federal Register** notice of any new or modified system of records.

As detailed below, OSHRC is revising this system-of-records notice to reflect that records related to Privacy Act requests, as well as program-related training, are maintained by employees in the Office of General Counsel. In addition, the notice has been revised to reflect that Microsoft OneDrive and .gov email accounts dedicated to Freedom of Information Act requests and privacy matters may contain Privacy Act records covered by this notice.

The notice for OSHRC-5, provided below in its entirety, is as follows.

SYSTEM NAME AND NUMBER:

Office of the General Counsel Records, OSHRC-5.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of the General Counsel, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457.

SYSTEM MANAGER(S):

Office of the General Counsel,
OSHRC, 1120 20th Street NW, Ninth
Floor, Washington, DC 20036-3457;
(202) 606-5100.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C.
552a; 29 U.S.C. 661; 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

This system of records is maintained to assist management in making decisions with respect to case processing activities; to assist OSHRC attorneys in organizing their work product; and to assist in other matters assigned to the Office of the General Counsel, such as processing Freedom of Information Act (FOIA) and Privacy Act requests and implementation of the agency's privacy program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records covers current and former OSHRC employees, contractors, and Commission members; Freedom of Information Act and Privacy Act requesters; and parties in cases that have been, or presently are, before OSHRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains documents—filings and other materials—pertaining to cases before OSHRC. These documents may include the following categories of records: (1) the names and locations (city and state) of the individuals representing each party; (2) the names of sole proprietors cited by OSHA, as well as employees and other witnesses, and information describing those individuals, including job title and duties, medical history, and other descriptive information that is relevant to the disposition of a case; and (3) the names and job titles of the Commissioners and ALJs. This system also contains other matters that have been assigned to the Office of the General Counsel for processing, such as FOIA and Privacy Act requests, which include the names of FOIA and Privacy Act requesters, contact information, and information concerning the requests. In addition, this system contains program-related training records, which include the names and/or business email addresses of OSHRC employees and contractors. Finally, this system includes documents necessary for managerial oversight, such as charts relating to workflow and teleworking. These documents may include the names of OSHRC employees and the cases assigned to them, as well as the employees' contact information.

RECORD SOURCE CATEGORIES:

Information in this system is derived from the individual to whom it applies or is derived from case processing records maintained by the Office of the Executive Secretary and the Office of the General Counsel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

(1) To the Department of Justice (DOJ), or to a court or adjudicative body before which OSHRC is authorized to appear, when any of the following entities or individuals—(a) OSHRC, or any of its components; (b) any employee of OSHRC in his or her official capacity; (c) any employee of OSHRC in his or her individual capacity where DOJ (or OSHRC where it is authorized to do so) has agreed to represent the employee; or (d) the United States, where OSHRC determines that litigation is likely to affect OSHRC or any of its components—is a party to litigation or has an interest in such litigation, and OSHRC determines that the use of such records by DOJ, or by a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation.

(2) To an appropriate agency, whether Federal, State, local, or foreign, charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes civil, criminal or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure.

(3) To a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information, such as current licenses, if necessary to obtain information relevant to an OSHRC decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit.

(4) To a Federal, State, or local agency, in response to that agency's request for a record, and only to the extent that the information is relevant and necessary to the requesting agency's decision in the matter, if the record is sought in connection with the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a license, grant or other benefit by the requesting agency.

(5) To an authorized appeal grievance examiner, formal complaints manager, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee, only to the extent that the information is relevant and necessary to the case or matter.

(6) To OPM in accordance with the agency's responsibilities for evaluation and oversight of Federal personnel management.

(7) To officers and employees of a Federal agency for the purpose of conducting an audit, but only to the extent that the record is relevant and necessary to this purpose.

(8) To OMB in connection with the review of private relief legislation at any stage of the legislative coordination and clearance process, as set forth in Circular No. A-19.

(9) To a Member of Congress or to a person on his or her staff acting on the Member's behalf when a written request is made on behalf and at the behest of the individual who is the subject of the record.

(10) To the National Archives and Records Administration (NARA) for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

(11) To appropriate agencies, entities, and persons when: (a) OSHRC suspects or has confirmed that there has been a breach of the system of records; (b) OSHRC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, OSHRC, the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with OSHRC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(12) To NARA, Office of Government Information Services (OGIS), to the extent necessary to fulfill its

responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with FOIA, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

(13) To another Federal agency or Federal entity, when OSHRC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored (1) on paper in offices and locked file cabinets at OSHRC's National Office in Washington, DC; (2) electronically on a shared OSHRC drive or on Microsoft OneDrive, both of which are access-restricted and require a username and password; and (3) as to some FOIA and Privacy Act requests, in .gov email accounts, which are dedicated to FOIA and privacy matters, access-restricted, and require a username and password.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved manually or electronically by case names or docket numbers; the names of OSHRC employees, contractors, or Commission members; or the names of other individuals, such as FOIA and Privacy Act requesters.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Paper and electronic records are maintained in accordance with General Records Schedules 2.6, 4.2, and 5.1, or for as long as needed for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records are maintained in offices and locked file cabinets. During duty hours, the records are under surveillance of personnel charged with their custody. After duty hours, the offices are accessible only using an office key or access card. Access to electronic records maintained on an OSHRC shared drive, Microsoft OneDrive, or dedicated .gov email accounts is restricted to personnel who require access to perform their official functions.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.4 (procedures for requesting notification of and access to personal records).

CONTESTING RECORD PROCEDURES:

Individuals who wish to contest their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on the specific procedures for contesting the content of a record, refer to 29 CFR 2400.6 (procedures for amending personal records), and 29 CFR 2400.7 (procedures for appealing).

NOTIFICATION PROCEDURES:

Individuals interested in inquiring about their records should notify: Privacy Officer, OSHRC, 1120 20th Street NW, Ninth Floor, Washington, DC 20036-3457. For an explanation on how such requests should be drafted, refer to 29 CFR 2400.4 (procedures for requesting notification of and access to personal records).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

April 14, 2006, 71 FR 19556; August 4, 2008, 73 FR 45256; October 5, 2015, 80 FR 60182; September 28, 2017, 82 FR 45324; and October 31, 2018, 83 FR 54789.

Nadine N. Mancini,

General Counsel, Senior Agency Official for Privacy.

[FR Doc. 2024-15275 Filed 7-10-24; 8:45 am]

BILLING CODE 7600-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023-102; CP2023-107; MC2024-404 and CP2024-412; MC2024-405 and CP2024-413; MC2024-406 and CP2024-414; MC2024-407 and CP2024-415; MC2024-408 and CP2024-416; MC2024-409 and CP2024-417; MC2024-410 and CP2024-418; MC2024-411 and CP2024-419; MC2024-412 and CP2024-420; MC2024-414 and CP2024-421]

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:* July 15, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- 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

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).

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)*.: CP2023–102; *Filing Title*: USPS Notice of Amendment to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 107, Filed Under Seal; *Filing Acceptance Date*: July 3, 2024; *Filing Authority*: 39 CFR 3035.105; *Public Representative*: Kenneth R. Moeller; *Comments Due*: July 15, 2024.

2. *Docket No(s)*.: CP2023–107; *Filing Title*: USPS Notice of Amendment to Priority Mail, First-Class Package Service & Parcel Select Contract 6, Filed Under Seal; *Filing Acceptance Date*: July 3, 2024; *Filing Authority*: 39 CFR 3035.105; *Public Representative*: Kenneth R. Moeller; *Comments Due*: July 15, 2024.

3. *Docket No(s)*.: MC2024–404 and CP2024–412; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 143 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 3, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Jennaca D. Upperman; *Comments Due*: July 15, 2024.

4. *Docket No(s)*.: MC2024–405 and CP2024–413; *Filing Title*: USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Express International & Priority Mail International Contract 10 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 3, 2024; *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*: July 15, 2024.

5. *Docket No(s)*.: MC2024–406 and CP2024–414; *Filing Title*: USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 39 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 3, 2024; *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*: July 15, 2024.

6. *Docket No(s)*.: MC2024–407 and CP2024–415; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 144 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 3, 2024; *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*: July 15, 2024.

7. *Docket No(s)*.: MC2024–408 and CP2024–416; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 145 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 3, 2024; *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*: July 15, 2024.

8. *Docket No(s)*.: MC2024–409 and CP2024–417; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 146 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 3, 2024; *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*: July 15, 2024.

9. *Docket No(s)*.: MC2024–410 and CP2024–418; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 147 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 3, 2024; *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*: July 15, 2024.

10. *Docket No(s)*.: MC2024–411 and CP2024–419; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 148 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 3, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Alireza Motameni; *Comments Due*: July 15, 2024.

11. *Docket No(s)*.: MC2024–412 and CP2024–420; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 149 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*:

July 3, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory S. Stanton; *Comments Due*: July 15, 2024.

12. *Docket No(s)*.: MC2024–414 and CP2024–421; *Filing Title*: USPS Request to Add Priority Mail Contract 790 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Gregory S. Stanton; *Comments Due*: July 15, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–15272 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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*: July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 140 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–401, CP2024–409.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15215 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 149 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–412, CP2024–420.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15210 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 137 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024–398, CP2024–406.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15212 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 5, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 790 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–414, CP2024–421.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15211 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 3, 2024, it

filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 146 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–409, CP2024–417.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15207 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 142 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–403, CP2024–411.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15217 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE**Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 139 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–400, CP2024–408.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15214 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 148 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–411, CP2024–419.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15209 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 143 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–404, CP2024–412.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15218 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 144 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–407, CP2024–415.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15219 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 138 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–399, CP2024–407.

Sean C. Robinson,
Attorney, Corporate and Postal Business Law.
[FR Doc. 2024–15213 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT: Sean C. 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 July 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 141 to Competitive Product List*. Documents

are available at www.prc.gov, Docket Nos. MC2024–402, CP2024–410.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–15216 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. 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 July 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 145 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–408, CP2024–416.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–15206 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, and USPS Ground Advantage® 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:* July 11, 2024.

FOR FURTHER INFORMATION CONTACT:

Sean C. 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 July 3, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage® Contract 147 to Competitive Product List*. Documents are available at www.prc.gov, Docket Nos. MC2024–410, CP2024–418.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2024–15208 Filed 7–10–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100462; File No. SR–LCH SA–2024–003]

Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to the Terms of Reference of the Board and Sub Committees

July 5, 2024.

I. Introduction

On May 6, 2024, Banque Centrale de Compensation, which conducts business under the name LCH SA (“LCH SA”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² a proposed rule change (the “Proposed Rule Change”) to amend the Terms of Reference (“ToR”) of its Board of Directors (“Board”) and the ToR of the following Board subcommittees: Technology, Security and Resilience; Audit; Risk; and Nomination. The Proposed Rule Change was published for comment in the **Federal Register** on May 23, 2024.³ The Commission has not received any comments on the Proposed Rule Change. For the reasons discussed below, the Commission is approving the Proposed Rule Change.

II. Description of the Proposed Rule Change

LCH SA is a clearing agency registered with the Commission. Through its CDSClear business unit, LCH SA provides central counterparty services for security-based swaps, including credit default swaps, and options on credit default swaps. LCH

SA is an affiliate of LCH Ltd, through common ownership by LCH Group.⁴ LCH SA's ultimate parent company is London Stock Exchange Group (“LSEG”).⁵

LCH SA's Board is responsible for LCH SA's overall management. It determines LCH SA's business strategies and oversees their implementation.⁶ LCH SA's Board has subcommittees that provide opinions, proposals, and recommendations to the full Board.⁷ The ToR of these Committees and of the Board detail their organization and functioning.⁸

LCH SA proposes updating these ToR. The proposed updates fall into six categories. The first category would rename the Technology, Security and Resilience Committee as the Operational Resilience Committee and expand the ambit of that committee. The second category would update the Audit Committee's responsibilities. The third would make additional changes to the Risk Committee's responsibilities, its supervision of risk at LCH SA, and other matters. The fourth would delete redundant language from the ToR. The fifth would make updates to reflect changes to the existence of and responsibilities for certain positions at LCH Group, which is LCH SA's intermediate parent company. The final category would include other miscellaneous changes.

A. Operational Resilience Committee

The Proposed Rule Change would rename the Technology, Security and Resilience Committee; expand the Committee's responsibilities; make the Committee the representative of, and advisor to, the Board on matters related to operational resilience; specify the Committee's relationship with other Board committees; and revise the qualifications required for members of the Committee.

⁴ LCH SA, Comprehensive Disclosure As required by SEC Rule 17Ad–22(e)(23), Section 3.2, https://www.lch.com/system/files/media_root/LCH%20SA%20Comprehensive%20Disclosure%20Covered%20Clearing%20Agency%20standards%20-%20SEC%20-%202020%20Final%20version.pdf#:~:text=LCH%20SA%20provides%2C%20on%20its%20website%2C%20a%20comprehensive,elements%20required%20by%20regulation%20EU%20N%20C2%B0%20575%2F2013%20%28CRR%29.

⁵ *Id.*

⁶ LCH SA Terms of Reference of the Board, Article 12.

⁷ LCH SA Terms of Reference of the Board, Article 15.

⁸ LCH SA Terms of Reference of the Board, Article 1; LCH SA Terms of Reference of the Board, Article 16; LCH SA Terms of Reference of the Board, Article 17; LCH SA Terms of Reference of the Board, Article 18; LCH SA Terms of Reference of the Board, Article 20.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 100169 (May 17, 2024), 89 FR 45717 (May 23, 2024) (File No. SR–LCH SA–2024–003) (“Notice”).

Renaming the Committee

First, as noted above, the Proposed Rule Change would rename the Technology, Security and Resilience Committee to be the Operational Resilience Committee. To that end, the Proposed Rule Change would amend this Committee's ToR, Articles 15 and 20 of the Board ToR, and Article 3.3.8 of the Audit Committee ToR to reflect this name change. Additionally, to reflect the Operational Resilience Committee's new name and to align with the Operational Resilience Committee ToR, LCH SA proposes changing the title of Article 11 of the Risk Committee ToR from "Operational Risk Management" to "Operational Resilience Risk."⁹

Committee's Responsibilities

LCH SA proposes the name change to better reflect the ambit of the Committee, which, under the Proposed Rule Change, would include technical subjects related to information systems, technology, and cybersecurity, as well as operational resilience.¹⁰ To reflect these responsibilities, LCH SA proposes replacing references to "technology, security and operational resilience" with references to "operational resilience" in Articles 1.4.3, 1.6, and 1.7 of the ToR.¹¹ For the same reason, LCH SA proposes changes to Articles 4.2.1 and 4.2.6.¹² In Article 4.2.1 of the Operational Resilience Committee ToR, LCH SA proposes specifying that the Operational Resilience Committee's review of LCH SA's operations and technology strategy and policies relates to operational resilience. In Article 4.2.6 of the Operational Resilience Committee ToR, the Proposed Rule Change would note, in part, that the Operational Resilience Committee must review and consider, where appropriate, LCH SA's resilience risk policies rather than its policies regarding operations and technology risk.

The Proposed Rule Change also would make the responsibilities of the Committee consistent with current practice and other LCH SA ToR. For example, current Article 1.2 states that the Committee must determine if management has put in place adequate strategies and plans which, among other things, provide reasonable assurance that LCH SA operates within its risk appetite. LCH SA's proposal would specify that the risk appetite is set by the Board, in accordance with current

practice.¹³ Separately, the Proposed Rule Change would also add text consistent with current practice to Article 1.2 of the Operational Resilience Committee ToR, stating that the Operational Resilience Committee will receive a regular assessment of operational resilience risks.¹⁴ Article 1.5 of the Operational Resilience Committee ToR currently provides, in part, that the Operational Resilience Committee must keep itself informed of changes in guidance from within the broader Group. LCH SA proposes changes to this provision requiring the Operational Resilience Committee to keep itself informed of changes in guidance from within the broader LCH Group and LSEG to align it with current practice.¹⁵

Board Representative and Advisor

Consistent with these responsibilities, the Proposed Rule Change also would make the Operational Resilience Committee the Board's representative and advisor on matters related to operational resilience.¹⁶ Currently, Section 1.1 of the Committee ToR provides that this Committee shall represent the interests of the Board in sound management of technology security and operational resilience, including cyber security, to ensure that technology security and operational resilience strategies, investments and outcomes support the mission values and strategic goals of LCH SA. The Proposed Rule Change would revise this to state that the Operational Resilience Committee shall represent the interests of the Board in the sound management of operational resilience to ensure that technology security, cyber security and operational resilience strategies, investments and outcomes support the mission, values, and strategic goals of LCH SA. LCH SA's proposal would also alter Section 1.2 of the Committee ToR to require the Operational Resilience Committee to determine whether management has put in place adequate strategies and plans which include appropriate management of operational resilience, rather than strategies and plans which include appropriate management of technical, security, operational resilience and cyber risks. The Proposed Rule Change would separately add a new Article 1.4.4 to indicate that the Operational Resilience Committee must help the Board review LCH SA's ongoing outsourcing and third-party risk management

arrangements, since they also relate to operational resilience.¹⁷

Other Board Committees

Just as the Committee would provide advice to the full Board on operational resilience matters, the Committee also would provide advice on operational resilience matters to other Board committees.¹⁸ Reflecting current practices to that end, the Proposed Rule Change would add new Articles 4.2.13, 4.2.14, and 4.2.15.¹⁹ Article 4.2.13 would require the Committee to provide advice to LCH SA's Risk Committee on specific operational resilience risk related matters as appropriate. Article 4.2.14 would require the Committee to review Detailed Operational Risk Assessments (DORAs) with significant elements relating to technology, cyber or other operational resilience, prior to recommending approval by the Risk Committee.²⁰ Article 4.2.15 would require that the Committee be notified of Operational Risk Assessments (ORA) related to cloud initiatives.

Related to the proposed addition of Article 4.2.14 of the Operational Resilience Committee ToR, LCH SA proposes changing Article 11.3 of the Risk Committee ToR to note that the Risk Committee will review and approve the recommendations of the Operational Resilience Committee in relation to DORAs for significant projects and new products and notify the Board of the same. Currently, Article 11.3 requires the Risk Committee to review DORAs for all significant projects and new products and to make recommendations to the Board for their approval. LCH SA also proposes adding a new Article 11.2 to the Risk Committee ToR to require the Risk Committee to inform the Board in a timely manner of any new risk affecting the resilience of LCH SA. These proposed changes are meant to align the Risk Committee ToR with the Operational Resilience Committee ToR.²¹

To further reflect the Committee's role as advisor to the Risk Committee on resilience risk matters, LCH SA also proposes to add a new Article 1.3 to the

¹⁷ *Id.* at 45718.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ DORAs are risk assessments related to new product initiatives, strategic projects, or significant changes. The relevant LCH SA business line or function in charge of the initiative, project, or change, must produce a DORA whenever the initiative, project, or change presents operational risks that are novel or could have the potential to impact the current operational risk appetite assessment or platform resiliency. *See* Notice, 89 FR at 45718, n.7.

²¹ *Id.* at 45720–21.

⁹ Notice, 89 FR at 45720–21.

¹⁰ *Id.* at 45717.

¹¹ *Id.* at 45718 n.5.

¹² *Id.*

¹³ *Id.* at 45718.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 45717–18.

Operational Resilience Committee ToR.²² The proposed Article 1.3 requires that the Operational Resilience Committee contribute to the review of the Technology Risk, Business Continuity Risk, Information Security and Cyber Risk, Operational Risk, Third Party (Outsourcing) Risk, and Physical Security Risk policies before they are presented to the Risk Committee for review and recommendation to the Board for approval. The Proposed Rule Change would also note in Article 1.3 that the Operational Resilience Committee will be notified by the owner of the policies of any breaches or waivers to those policies. To align the Risk Committee ToR with the Operational Resilience Committee ToR, LCH SA also proposes changes to Article 11.1 of the Risk Committee ToR.²³ Currently, Article 11.1 requires the Risk Committee to review, on an annual basis, LCH SA's Resilience Risk Policy, to consider proposals for modification of those arrangements, and to make recommendations to the Board for approval. Under the Proposed Rule Change, Article 11.1 would require the Risk Committee to review, on an annual basis, the Company's Operational Resilience Risk Policies, following review by the Operational Resilience Committee, and to make recommendations to the Board for approval.

Relatedly, LCH SA proposes deleting from the ToR language related to other Committees to align with the Operational Resilience Committee's responsibilities. For example, current Article 11.2 of the Risk Committee ToR requires the Risk Committee to review and provide advice on any aspects of LCH SA's Operational Risk Management Framework on request by the Audit Committee or the Board. Because it requires the Risk Committee to take action within the ambit of the Operational Resilience Committee,²⁴ LCH SA proposes removing this Article 11.2 of the Risk Committee ToR. Similarly, Article 1.3.6 of the Audit Committee ToR provides that the Audit Committee must assist the Board in fulfilling its responsibility relating to review of LCH SA's internal control environment, including review of resilience risk matters. The Proposed Rule Change would delete the reference to review of resilience risk matters because those would be the Operational Resilience Committee's responsibility.²⁵ Separately, LCH SA proposes removing

current Article 3.3.6(a)(iv) of the Audit Committee ToR in its entirety because it requires the Audit Committee to review provisions for business continuity and disaster recovery and the assessment of the effectiveness of the arrangements in place at least once a year. This is also the Operational Resilience Committee's responsibility.²⁶

Finally, LCH SA also proposes changes to Article 4.4 of the Operational Resilience Committee ToR to clarify the Committee Chair's membership on the Risk and Audit Committees.²⁷ Current Article 4.4 declares the Chair of the Operational Resilience Committee to be a member of the Audit Committee. Moreover, it allows the Risk Committee to invite the Chair of the Operational Resilience Committee to Risk Committee meetings on relevant matters and in a non-voting capacity. Under Article 4.4 as revised, the Chair of the Operational Resilience Committee would be a standing member of the Audit Committee and the Risk Committee. To further carry out this change, LCH SA also proposes adding a new Article 1.1.2 to the Risk Committee ToR, which would require that the Chair of the Operational Resilience Committee be a member of the Risk Committee.²⁸

Qualifications of Committee Members

LCH SA proposes additional changes to ensure members of Operational Resilience Committee have experience consistent with the Committee's responsibilities.²⁹ Currently, Article 2.1.2 provides that members of the Committee ideally have significant, recent and relevant experience of the operations of LCH and its dependence on technology. The Proposed Rule Change would revise Article 2.1.2 to require members of the Operational Resilience Committee to have the relevant expertise required for the Committee to function properly, as well as recent and relevant experience of the operations of LCH Group. LCH SA also proposes to renumber current Article 2.2 of the Operational Resilience Committee ToR to Article 2.1.3, and amend it to provide that other experts in IT, security, resilience matters, and more generally on operational resilience matters, rather than merely other technology expert individuals, may attend the meetings of the Committee on relevant matters in a non-voting capacity.

B. Audit Committee

The Proposed Rule Change would make various updates to the Audit Committee's responsibilities. For example, current Article 1.3.5 provides that the Audit Committee will review Enterprise Risk Reports. Because LCH SA is expanding the detail provided in these reports, the Proposed Rule Change would rename them as the Resilience and Enterprise Risk Management reports.³⁰

The Proposed Rule Change also would amend Article 3.3.4, which sets out the Audit Committee's responsibilities for reviewing LCH SA's compliance with regulations. The Proposed Rule Change would add to Article 3.3.4 a requirement that the Committee approve the compliance policies and be informed of any breaches. LCH SA is making this change to document an existing practice of the Audit Committee.³¹

Similarly, current Article 3.3.5 requires that the Audit Committee, among other things, review the process for annual model validations and breaches of LCH SA's Risk Governance Framework. The proposed rule change would add a requirement that the Committee be notified of outside appetite financial and resilience risks. LCH SA proposes this change to make the Audit Committee better informed as it carries out its responsibilities.³²

Finally, current Article 3.3.6(a)(iii) requires that the Committee receive annual reports required by a 2014 order of its national regulators related to internal controls.³³ To ensure that the Audit Committee receives reports required by all applicable laws and regulations, rather than the reports required by those specific articles, LCH SA proposes deleting the reference to the specific order. Instead, Article 3.3.6(a)(iii) would require that the Audit Committee receive annual reports required by law or regulation from time to time.³⁴

C. Risk Committee

The proposed rule change also would change the Risk Committee ToR with respect to the Committee's responsibilities, the Committee's supervision of risk at LCH SA, reporting by the Committee, responsibilities of LCH SA's Chief Risk Officer, and membership of the Committee.

²² *Id.* at 45718.

²³ *Id.* at 45720–21.

²⁴ *Id.* at 45721 n.19.

²⁵ *Id.* at 45719.

²⁶ *Id.* See also Article 4.2.8 of the Operational Resilience Committee ToR.

²⁷ *Id.* at 45718

²⁸ *Id.* at 45718 n.9.

²⁹ *Id.* at 45718.

³⁰ *Id.* at 45719.

³¹ *Id.*

³² *Id.* at 45719.

³³ *Id.*

³⁴ *Id.*

Responsibilities

With respect to the responsibilities of the Committee, the Proposed Rule Change first would add a new Article 6.4. Article 6.4 would provide that the Risk Committee should be notified of the outcome of the annual independent validation of the counterparty credit scoring model, in accordance with the Model Governance Validation and Review Policy. LCH SA is making this change to be consistent with its current practice.³⁵

Current Article 7.4 requires that the Committee review LCH SA's risk policy on the eligibility of new products. Since this policy is now called the Contract and Market Acceptability Policy, LCH SA proposes reflecting this name change in Article 7.4 of the Risk Committee ToR.³⁶

LCH SA also proposes a new Article 7.5 in the Risk Committee ToR. This new article would require that the Committee review annually a report outlining the compliance of all markets and products against the criteria defined in the Contract and Market Acceptability Policy. LCH SA is making this change to be consistent with its current practice.³⁷

Further, for the same reason, LCH SA proposes revising renumbered Article 7.7.1. Current Article 7.7.1 clarifies that the CEO of LCH SA may be given authority to approve clearing of certain new contracts or products, without prior approval by the Risk Committee, subject to notifying the Committee. The Proposed Rule Change would add to this provision approval of trade venues, in addition to contracts or products.³⁸

Articles 8 and 9 of the Risk Committee ToR contain additional proposed changes to the Committee's responsibilities, which LCH SA is making to reflect current practice.³⁹ Current Article 8.2 requires that the Committee review initial margin policies and consider amendments to those policies. The Proposed Rule Change would amend Article 8.2 to reflect that the initial margin policies that the Risk Committee currently reviews are contained within the Financial Resource Adequacy Policy. LCH SA would also add a new Article 8.4. This new article would require the Risk Committee to be notified of the outcome of the annual independent validation of all margin models in

accordance with the Model Governance, Validation and Review Policy.

Proposed revisions to Article 9 would clarify the Committee's responsibilities related to LCH SA's default procedures, again to be consistent with current practice.⁴⁰ Current Article 9.1 requires that the Committee, in certain circumstances, review the adequacy of LCH SA's default funds on the basis of stress testing. The Proposed Rule Change would revise this slightly, to clarify that the Committee's review would be on the basis of stress testing and reverse stress testing reports.

LCH SA also proposes to add new Articles 9.4 and 9.7 to reflect current practice.⁴¹ Article 9.4 would provide that the Risk Committee should be notified of the outcome of the annual independent validation of all stress testing models used to size the default funds in accordance with the Financial Resource Adequacy Policy, while Article 9.7 would note that the Risk Committee reviews default management fire drill exercise reports to assess the Company's default management process.

Moreover, LCH SA proposes several new provisions and revisions in Article 10 of the Risk Committee ToR to reflect current practices related to liquidity risk management.⁴² First, the Proposed Rule Change would add new Articles 10.3, 10.4, and 10.6. Article 10.3 would provide that the Risk Committee reviews annually (or more frequently if deemed necessary) the LCH SA Liquidity Plan detailing how the standards contained in the Liquidity Risk Policy are applied, to consider proposed changes, and to make recommendations to the Board for approval. New Article 10.4 would require that the Committee be notified of the outcome of the annual independent validation of the liquidity risk model, in accordance with the Liquidity Risk Policy. New Article 10.6 would require that the Committee be notified of the outcome of the annual independent validation of the collateral haircut model, in accordance with the Collateral Risk Policy. Further, the Proposed Rule Change would add a sentence to renumbered Article 10.5 noting that the Risk Committee should consider the addition of new collateral types and associated risk controls, and recommend them to the Board for approval.

The Proposed Rule Change would also add a new Article 12 to the Risk Committee ToR, titled Model

Governance and Procyclicality. Under new Article 12.1, the Risk Committee would review annually (or more frequently if deemed necessary) the Company's Model Governance, Validation and Review Policy, to consider proposals for modification of those arrangements, and to make recommendations to the Board for approval. Under proposed Article 12.2, the Risk Committee would review, at least annually and upon material change, reports prepared by independent model experts confirming the ongoing suitability of LCH SA's financial risk models, in accordance with the Model Governance, Validation and Review Policy. Proposed Article 12.3 would require the Committee to review annually (or more frequently if deemed necessary) LCH SA's Procyclicality Risk Policy, to consider proposals for modification of those arrangements and to make recommendations to the Board for approval. The Committee also would review, at least annually, reports confirming that LCH SA's risk models do not operate in a procyclical manner under proposed Article 12.4. Consistent with LCH SA's overall current practice, these changes would help ensure that the LCH SA Risk Committee ToR mirror the corresponding ToR of its affiliated company, LCH Limited.⁴³

Proposed changes to renumbered Articles 13 and 20 of the Risk Committee ToR also would reflect LCH SA's current practices.⁴⁴ LCH SA proposes a new Article 13.2 reflecting the current practice that the Risk Committee reviews, on an annual basis (or more frequently if deemed necessary), LCH SA's Recovery Plan and Wind Down Plan, considers proposals for modification of those arrangements, and makes recommendations to the Board for approval. Current Article 12.2 requires that the Committee consider any issue relating to the outsourcing of functions which may impact the risk management of LCH SA. The Proposed Rule Change would renumber this article to 13.3 and would add language to clarify that it applies to any issue or new arrangement relating to the outsourcing of functions which may impact the risk management of the LCH SA, rather than only issues.

LCH SA's proposal would also correct renumbered Article 20.2 to reflect how the Risk Committee currently may assess the remuneration structure's impact on LCH SA's risk profile.⁴⁵ The

³⁵ *Id.* at 45720.

³⁶ *Id.* at 45720 n.15.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 45721.

⁴⁴ *Id.*

⁴⁵ *Id.*

current article, in part, requires that the Risk Committee have access to: (i) the risk management department (to assess how the remuneration structure affects the risk profile of LCH SA); (ii) the human resource department, (iii) the compliance department, and (iv) the internal audit department. The Proposed Rule Change would revise renumbered Article 20.2 to delete text giving the Risk Committee access to the risk management department. Instead, under revised Article 20.2, the Committee would have access to (i) the human resource department (to assess how the remuneration structure affects the risk profile of LCH SA), (ii) the compliance department, and (iii) the internal audit department. LCH SA is making this correction to reflect how the Risk Committee currently considers this remuneration risk.⁴⁶

Supervision of Risk

The Proposed Rule Change would make several changes to the Risk Committee ToR related to the Committee's supervision of risk, including through the information reported to the Committee. One such proposed change would add a new Article 3.2 clarifying that the risks within the current scope of the LCH SA Risk Committee are financial and model risks and operational resilience risks. LCH SA proposes this change to strengthen the Risk Committee's supervision of certain information technology and resilience risk matters.⁴⁷ As noted above, while the Operational Resilience Committee would also have responsibilities related to operational resilience risks, that committee's role is one of review, and it would be required to provide advice to LCH SA's Risk Committee on specific operational resilience risk-related matters as appropriate.

LCH SA also proposes a change in Article 4.2 of the Risk Committee ToR. Current Article 4.2 provides that the Risk Committee will receive a detailed report from the Executive Risk Committee which includes, among other things, the risk profile of LCH SA on a monthly basis. The Proposed Rule Change would clarify that this report would cover the risks defined within the scope in Article 3.2 of the Risk Committee ToR.⁴⁸ Moreover, current Article 4.2 provides that this report will cover LCH SA and LCH Group. Due to a change in corporate structure, LCH SA's proposal would indicate in Article 4.2 that this report would include the

risk profile of only LCH SA, rather than LCH SA and LCH Group.⁴⁹

Reporting by the Risk Committee

In addition to revising the reporting to the Risk Committee, the Proposed Rule Change would revise the reporting by the Risk Committee. Specifically, LCH SA proposes that the Risk Committee Secretary no longer make available all minutes to the Chair of the Audit Committee of the LCH Group Board under Article 2.9 of the Risk Committee ToR. Instead, Article 2.9 would only require the Risk Committee Secretary to make those minutes available to the LCH SA Board and the Chair of the LCH SA Audit Committee. LCH SA proposes this change because the LCH Group Board does not usually consider discussions, decisions, and recommendations of the Risk Committee. Instead, discussions, decisions, and recommendations of the Risk Committee are reported to the LCH SA Board.⁵⁰

Chief Risk Officer

The Proposed Rule Change would also amend the Risk Committee ToR as it relates to certain responsibilities of LCH SA's Chief Risk Officer ("CRO"). First, the Proposed Rule Change would delete Article 2.10 of the Risk Committee ToR in its entirety. This provision requires that the CRO report to the LCH Group Board on the discussions, decisions, and recommendations of the Risk Committee to formally ratify those decisions and recommendations that affect the Group. LCH SA is deleting this provision because, as noted, the LCH Group Board does not usually consider discussions, decisions, and recommendations of the Risk Committee.⁵¹

Article 10.7.4 currently requires either the CRO or the Head of Collateral and Liquidity Management ("CaLM") to sign off on breaches of the limits or restrictions detailed in the Collateral Risk Policy and/or the Investment Risk Policy. Since the CRO is responsible for these policies, including signing off on them as part of their second line function, LCH SA proposes requiring sign-off by only the CRO.⁵²

The Proposed Rule Change would also clarify the responsibilities of the CRO in renumbered Article 16 (current Article 15) by editing renumbered Article 16 of the Risk Committee ToR to simplify the description of the information provided to the Committee

by the CRO. Current Article 15.1 provides that the Committee will consider and review regular reports prepared by the Risk Management Department of LCH SA, which covers recent developments in at least the areas listed in current Articles 15.1.1 through 15.1.8, such as membership and operations. LCH proposes changing this Article's number to 16.2 and deleting the list of areas to be covered. Instead, a new Article 16.1 would state that the Risk Committee receives management information from the CRO of LCH SA on the assessment of all financial, model and operational resilience risks, and informs the Board in a timely manner of any new significant risk change affecting the resilience of the Company. New Article 16.1 also would state that this report will include any breaches or waivers granted. Proposed Article 16.2 would indicate that the management information will cover recent developments and material issues related to Financial, Model, and Operational Resilience Risks. This revised Article would still require the CRO report to the Committee on all risks, but would not list the specific areas covered, as currently found in Article 15.1.

Membership

LCH SA also would amend the Risk Committee ToR as it relates to members of the Committee. Current Article 1.1 provides that the Risk Committee must include representatives of clients as required by law or regulation from time to time. Article 1.1 further explains that no client representatives on the Committee may be employees of LCH Group. The Proposed Rule Change would revise this slightly, to provide that these client representatives may not be employees of any LCH Group company, meaning LCH Group Holdings Limited and its subsidiaries. This change is proposed to conform the Risk Committee ToR to LCH Group requirements.⁵³

Moreover, Article 1.1 also currently provides that the Risk Committee must include representatives of LCH SA's Clearing Members as required by law or regulation from time to time and who have significant experience in market, credit, or liquidity risk management. The Proposed Rule Change would add operational risk management to this list of subject matters in respect of which such Committee members should have significant expertise and experience. This would be consistent with the overall scope of responsibility of the Committee, as discussed above. This

⁴⁶ *Id.*

⁴⁷ *Id.* at 45720.

⁴⁸ *Id.*

⁴⁹ *Id.* at 45720 n.13.

⁵⁰ *Id.* at 45720.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 45719.

change is proposed to conform the Risk Committee ToR with LCH Group requirements.⁵⁴

LCH SA also proposes changes related to permitted conduct by External Committee Members of the Risk Committee. Current Article 1.5 defines External Committee Members as those members of the Risk Committee that are not independent directors of LCH SA, who attend meetings as risk experts and represent Clearing Members and clients. Currently, under Article 1.6 of the Risk Committee ToR, External Committee Members may consult with other individuals within their organization, prior to Risk Committee meetings, where expertise other than the specialty of the external member is required. LCH SA's proposed changes specify that External Committee Members' consultations with other individuals within their organization, under Article 1.6, are subject to restrictions set out in the confidentiality agreements signed by the External Committee Members.

Finally, the Proposed Rule Change would amend the list of individuals that can attend meetings of the Committee in a non-voting capacity. Currently, Article 1.2 lists individuals that may do so, including the Head of Financial Risk of LSEG, or their nominated delegate (under 1.2.6). LCH SA proposes revising current Article 1.2.6 to replace the Head of Financial Risk of LSEG, or their nominated delegate, with the Chief Risk Officer of LSEG, or their nominated delegate. LCH SA believes this proposed change would ensure that the Risk Committee has appropriate oversight of all risks, including those risks that affect its ultimate parent company, LSEG.⁵⁵

Similarly, under current Article 1.2.8, such other individuals within the Group, as considered appropriate by the Committee, may attend in a non-voting capacity. The Proposed Rule Change would replace the reference to "individuals within the Group" with LCH SA employees. LCH SA proposes this change because it believes LCH SA employees would ostensibly have the expertise and background necessary to participate in Risk Committee meetings.⁵⁶ Moreover, under the Proposed Rule Change, the Committee Chair rather than the entire Committee would determine whether it is appropriate for LCH SA employees to receive an invitation to a Risk Committee meeting, because such invitations would be limited to a

particular agenda item and in a non-voting capacity.⁵⁷

D. Deletion of Redundant Language

LCH SA proposes several changes that would delete redundant language, and make related updates as needed, in the ToR of the Audit, Operational Resilience, and Risk committees.

In the Audit Committee ToR, current Article 1.4 requires that the Committee keep itself informed of changes to laws and regulations applicable to the audit policy of LCH SA and matters for which the Audit Committee is responsible. The Proposed Rule Change would remove from Article 1.4 reference to the audit policy of LCH SA because the "matters for which the Audit Committee is responsible" includes the audit policy.⁵⁸ Similarly, LCH SA proposes replacing a reference to its audit policy in Article 1.5 with a reference to "matters listed above." As revised, Article 1.5 would provide that nothing in the Audit Committee ToR will diminish the responsibility of the Board to maintain ongoing review of the matters listed above. A specific reference to audit policy in Article 1.5 is unnecessary because current Article 1.3, which describes the responsibilities of the Audit Committee, is broad enough to include audit policy.⁵⁹ The Proposed Rule Change would also delete current Article 2.3.2 in its entirety. This article indicates that the LCH SA Audit Committee Chair may also be appointed as the Chair of the LCH Limited Audit Committee. Article 2.2.2 of the ToR of the Audit Committee for LCH Limited already notes that the same person can chair both committees.⁶⁰ Finally, LCH SA would remove current Article 3.3.4(e), which requires the Audit Committee to review the performance of LCH SA's Chief Compliance Officer. LCH SA is removing this provision because it covers responsibilities held by the Remuneration Committee.⁶¹

LCH SA also proposes a change in part to eliminate redundant language in the Operational Resilience Committee ToR. Current Article 4.2.10 of the Operational Resilience Committee ToR provides that the Operational Resilience Committee reviews and receives reports as appropriate, on operations and agreed metrics in conjunction with the Audit Committee. Since current Article 4.2.9 of the Operational Resilience Committee ToR already provides that the

Operational Resilience Committee receives reports, as appropriate, from the Audit Committee regarding the results of reviews and assessments of LCH SA's operations and technology functions, LCH SA views Article 4.2.10 as redundant.⁶² Therefore, LCH SA proposes to delete it. With the deletion of current Article 4.2.10, current Article 4.2.11 would become new Article 4.2.10 with some proposed revisions. Specifically, new Article 4.2.10 (former Article 4.2.11) would require the Operational Resilience Committee to review and receive reports in relation to ongoing technology outsourcing rather than on technology outsourcing.

Moreover, LCH SA's proposal would remove Article 7.3 of the Operational Resilience Committee ToR in its entirety. This provision notes that any disagreement within the Board, including disagreement between the Committee's members and the rest of the Board, should be resolved at the Board level. Further, it notes that where disagreements between the Committee and the Board cannot be resolved, the Committee has the right to report the issue to the shareholders through the Company's annual report. LCH SA proposes to remove this provision because it is applicable only to the Audit Committee ToR.⁶³

Finally, the Proposed Rule Change would make a similar change to the Risk Committee ToR to remove a redundant provision. Specifically, the Proposed Rule Change would delete Article 1.2.5 of the Risk Committee ToR in its entirety. This provision allows the Chief Executive Officer of LCH Group to be invited *ex officio* to attend Risk Committee meetings in a non-voting capacity. LCH SA proposes deleting Article 1.2.5 because the Chief Executive Officer of LCH SA is already listed as the appropriate *ex officio* non-voting party under Article 1.2.2 of the Risk Committee ToR.

E. Positions at LCH Group

The Proposed Rule Change also would make updates regarding changes to certain positions at LCH Group. As noted above, LCH Group is LCH SA's intermediate parent company.

The Proposed Rule Change would update the Nomination Committee, Board, and Risk Committee ToR to reflect the retirement of the LCH Group Chief Risk Officer position. Current Article 2.3 of the Nomination

⁵⁷ *Id.*

⁵⁸ *Id.* at 45719.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 45718. LCH SA also proposes this change because it would help prevent the Operational Resilience Committee's responsibilities from overlapping with the Audit Committee's Responsibilities. *Id.*

⁶³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 45719.

⁵⁶ *Id.*

Committee ToR provides that the LCH SA Board will comprise the Chief Executive Officers of LCH Group; LCH SA, as proposed by the Group CEO; and the Chief Risk Officer of LCH Group, as proposed by the Group CEO or such other LCH executive as may be proposed by the Group CEO. Current Article 2.3 defines these individuals as Executive Directors. Since the LCH Group Chief Risk Officer position has been retired, the Proposed Rule Change would remove this position from Article 2.3 of the Nomination Committee ToR.⁶⁴ Instead, the Chief Risk Officer of London Stock Exchange Group, rather than LCH Group, as proposed by the CEO of LCH Group, will be a member of the Board. The Proposed Rule Change also would add to Article 2.3 that an LSEG executive, as may be proposed by the LCH Group CEO, will also be a member of the Board. Finally, under revised Article 2.3, the term Executive Director would be defined as either the Chief Executive Officer of LCH SA or LCH Group.

Similarly, LCH SA proposes changes to Article 3 of the ToR of the Board to account for the retirement of the LCH Group Chief Risk Officer position. Currently, Article 3 provides that the Board includes, as a category of directors, Executive Directors which includes the LCH SA CEO, the LCH Group CEO, and an additional LCH executive, who may be but shall not be limited to the Chief Risk Officer of LCH Group. LCH SA proposes deleting reference to the LCH Group Chief Risk Officer from this provision and including only the LCH SA CEO and LCH Group CEO as Executive Directors. Additionally, LCH SA proposes including as a separate category of Director an additional LCH or LSEG executive, who may be but shall not be limited to the chief risk officer of LSEG, as proposed by the CEO of LCH Group. Like the changes to Article 2.3 of the Nomination Committee ToR, these revisions would replace the Chief Risk Officer of LCH Group with the Chief Risk Officer of LSEG.

Finally, LCH SA also proposes updating the Risk Committee ToR to reflect the retirement of the Group CRO. Specifically, the Proposed Rule Change would delete Article 1.2.4 from the Risk Committee ToR because it indicates that the Chief Risk Officer of LCH Group may be invited to attend Risk Committee meetings in a non-voting capacity.⁶⁵

Separately, current Article 10.7.4 of the Risk Committee ToR provides that if

any of the limits or restrictions detailed in LCH SA's Collateral Risk Policy and/or Investment Risk Policy are breached, that breach must be, among other things, reported to the Risk Committee, the Audit Committee, the Executive Risk Committee, and the CEOs of LCH SA and LCH Group. The Proposed Rule Change would delete the reference to the CEO of LCH Group. LCH SA is making this change because LCH Group's CEO does not usually consider breaches of those policies. Therefore, it is no longer necessary to report such breaches to LCH Group's CEO.⁶⁶

F. Miscellaneous Changes

The Proposed Rule Change also would make updates to defined terms across the various ToR and make other non-substantive changes, as described below.

With respect to the defined terms, the Proposed Rule Change would replace the term Chairman with Chair in the ToR of the Operational Resilience Committee, Audit Committee, and Risk Committee.⁶⁷ LCH SA also proposes changes that would specify that Group means LCH Group in Article 5.1 of the Operational Resilience Committee ToR and Article 2.5 of the Risk Committee ToR.⁶⁸ The Proposed Rule change also would replace the term Group with LCH in Articles 14.1 and 16.4 of the Risk Committee ToR in order to be consistent with LCH Group terminology.⁶⁹

In the ToR of the Board, LCH SA proposes removing the requirement that meeting minutes be translated to French before being presented to the Board because this is now unnecessary based on the composition of the Board.⁷⁰ The Proposed Rule Change would also edit Article 12(e) of the ToR of the Board to align it with LCH SA's internal procedures, which require that the Board approve LCH SA's Wind Down Plan.⁷¹ Under current Article 12(e), the Board approves LCH SA's Business Continuity Policy and Disaster Recovery Plan. LCH SA proposes that Article 12(e) require the Board to approve LCH SA's Business Continuity Policy, Disaster Recovery Plan, and Wind Down Plan.

Finally, the Proposed Rule Change would renumber various provisions because of the changes described above as well as make a number of non-substantive clarifying changes.

⁶⁶ *Id.*

⁶⁷ *Id.* at 45717.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 45721.

⁷¹ *Id.*

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act requires the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the Proposed Rule Change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the organization.⁷² Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change."⁷³

The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁷⁴ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.⁷⁵ Moreover, "unquestioning reliance" on an SRO's representations in a proposed rule change is not sufficient to justify Commission approval of a proposed rule change.⁷⁶

After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to LCH SA. More specifically, for the reasons given below, the Commission finds that the Proposed Rule Change is consistent with Sections 17A(b)(3)(C)⁷⁷ and 17A(b)(3)(F) of the Act⁷⁸ and Rule 17Ad-22(e)(2)(v).⁷⁹

A. Consistency With Section 17A(b)(3)(C) of the Act

Under Section 17A(b)(3)(C) of the Act, LCH SA's rules must "assure fair representation of its shareholders (or members) and participants in the selections of its directors and administration of its affairs." The Commission has stated that "at a

⁷² 15 U.S.C. 78s(b)(2)(C).

⁷³ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 447 (D.C. Cir. 2017) ("Susquehanna").

⁷⁷ 15 U.S.C. 78q-1(b)(3)(C).

⁷⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁷⁹ 17 CFR 240.17Ad-22(e)(2)(v).

⁶⁴ *Id.* at 45719 n.12.

⁶⁵ *Id.* at 45719.

minimum, fair representation requires that the entity responsible for nominating individuals for membership on the Board should be obligated by law or rule to make nominations with a view toward assuring fair representation of the interests of shareholders and a cross section of the community of participants.”⁸⁰ Based on its review of the record and for the reasons discussed below, the Commission believes that LCH SA’s changes are consistent with Section 17A(b)(3)(C).⁸¹

First, the proposed changes would not alter the number of directors that represent LCH SA’s participants, which are User Directors.⁸² The Commission approved the current version of the LCH SA Board ToR.⁸³ Under the ToR, User Directors are currently a category of Director on LCH SA’s Board. A User Director means a director who is nominated by a shareholder of LCH Group which is a User or who is otherwise connected to such User shareholder by virtue of his employment or directorship. The Proposed Rule Change would not alter the inclusion of User Directors on the Board.

Second, the Proposed Rule Change would work to enhance LCH SA’s owners’ representation in the administration of LCH SA’s affairs. LCH SA has one shareholder, LCH Group,⁸⁴ and LCH SA’s ultimate parent company is LSEG. As the Commission previously found, LCH SA’s ToR ensure LSEG’s and LCH Group’s ability to participate in LCH SA’s affairs through provisions that would, for example, provide LSEG with a seat on the LCH SA Board or require LCH SA to seek LCH Group approval to take action.⁸⁵ The Proposed Rule Change would enhance LSEG’s representation in the administration of LCH SA’s affairs by, for example, replacing LCH Group’s Chief Risk Officer with LSEG’s Chief Risk Officer as a potential member of the Board in the ToR of the Board and the Nomination Committee. Representation of LSEG is important because LSEG is LCH SA’s ultimate shareholder. At the same time, despite shifts in LCH Group’s representation in some

respects—for example, the LCH Group CEO would no longer be invited to Risk Committee Meetings—its representation in the administration of LCH SA’s affairs would remain significant. For example, under LCH SA’s proposal, the CEO of LCH Group would still be an Executive Director of LCH SA.

For the foregoing reasons the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(C) of the Act.⁸⁶

B. Consistency With Section 17A(b)(3)(F) of the Act

Under Section 17A(b)(3)(F) of the Act, LCH SA’s rules, among other things, must be “designed to promote the prompt and accurate clearance and settlement of securities transactions . . . derivative agreements, contracts, and transactions . . . and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.”⁸⁷ Based on its review of the record, and for the reasons discussed below, the Commission believes that LCH SA’s changes are consistent with Section 17A(b)(3)(F) of the Act.⁸⁸

The Proposed Rule Change makes the ambit of the Technology, Security and Resilience Committee and the Risk Committee clearer. For example, under the proposal, the Technology, Security and Resilience Committee’s purpose would be changed to represent the interests of the Board in the sound management of operational resilience to ensure that technology security, cyber security and operational resilience strategies, investments and outcomes support the mission, values, and strategic goals of LCH SA. To reflect this change in scope, LCH SA proposes renaming the Committee the Operational Resilience Committee. LCH SA also proposes a new Article 3.2 of the Risk Committee ToR clarifying that the risks within the scope of the LCH SA Risk Committee are financial and model risks and operational resilience risks.

Further, the Proposed Rule Change would more clearly identify responsibilities and maintain consistency between those responsibilities and the scope of certain Committees. For example, LCH SA proposes adding Articles 4.2.13 through 4.2.15 to the ToR of the Operational Resilience Committee to require the Operational Resilience Committee to review certain matters and provide

advice to the Risk Committee. Relatedly, proposed changes to Article 11.3 of the ToR of the Risk Committee would require the Risk Committee to review and approve recommendations of the Operational Resilience Committee for certain matters. LCH SA’s proposal would also add a new Article 1.3 to the Operational Resilience Committee ToR requiring that the Operational Resilience Committee help with the review of a number of different policies. Further, LCH SA proposes deleting language from certain ToR to ensure its Committees do not encroach on one another’s responsibilities. To that end, along with other provisions, LCH SA proposes removing Article 11.2 of the Risk Committee ToR, which requires the Risk Committee to review and provide advice on any aspects of LCH SA’s operational risk management framework on request by the Audit Committee or the Board. LCH SA also proposes adding a new Article 3.3.4(a) to the Audit Committee ToR requiring the Audit Committee to approve the Compliance policies and be informed of any breaches. To make sure that the Risk Committee has appropriate oversight of all risks, LCH SA proposes replacing the Head of Financial Risk of LSEG, or their nominated delegate, with the Chief Risk Officer of LSEG, or their nominated delegate, in current Article 1.2.6 as an ex officio party to be invited to Risk Committee meetings in a non-voting capacity from time to time.⁸⁹

The proposed changes would also help clarify and simplify LCH SA’s ToR by deleting redundant text. For example, the proposal would remove redundant references to the Audit Policy from Articles 1.4 and 1.5 of the Audit Committee ToR. Likewise, the proposed deletion of Article 2.3.2 from the Audit Committee ToR would eliminate a duplicative provision that indicates that the LCH SA Audit Committee Chair may also be appointed as the Chair of the LCH Limited Audit Committee. A provision in the ToR of the Audit Committee for LCH Limited already notes the same person can be Chair of both committees.

LCH SA also proposes changes making the ToR clearer by improving their accuracy, renaming items, and identifying where to find information. For example, the Proposed Rule Change would make a number of changes related to the retirement of the LCH Group Chief Risk Officer position. Additionally, LCH SA proposes changing the name of reports identified in Article 1.3.5 of the Audit Committee ToR in line with additional details

⁸⁰ Securities Exchange Act Release No. 20221 (Sept. 23, 1983), 48 FR 45167, 45172 (Oct. 3, 1983).

⁸¹ 15 U.S.C. 78q-1(b)(3)(C).

⁸² Notice, 89 FR at 45722.

⁸³ Securities Exchange Act Release No. 89793 (Sept. 9, 2020), 85 FR 57266 (Sept. 15, 2020) (File No. SR-LCH SA-2020-003).

⁸⁴ LCH Group Holdings Limited Report and Consolidated Financial Statements for the year ended 31 December 2023, https://www.lch.com/system/files/media_root/lch-group-holdings-limited-financial-statements.pdf.

⁸⁵ Securities Exchange Act Release No. 89793, 85 FR at 57271.

⁸⁶ 15 U.S.C. 78q-1(b)(3)(C).

⁸⁷ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁸ 15 U.S.C. 78q-1(b)(3)(F).

⁸⁹ Notice, 89 FR at 45719.

contained in the reports. LCH SA also proposes noting that initial margin policies that the Risk Committee must review are located in the Financial Resource Adequacy Policy.

By making the ambit of the Committees clearer, more clearly identifying Committee responsibilities, and maintaining consistency between Committee responsibilities and Committee scopes, LCH SA reduces the potential for confusion by Committees or individuals as to whether they have a specific responsibility. By deleting redundant text, LCH SA lowers the chance that it could have contradictory text within its rules, which would also create confusion. By correcting inaccurate text, LCH SA makes it less likely that there is confusion as to what the ToR require. By renaming items to better match their contents and identifying where to find information LCH SA improves the chances that individuals can find accurate information when referring to their ToR and thereby reduces the likelihood there will be confusion. Reducing the potential for confusion could help ensure that Committees complete their responsibilities in timely manner. To the extent Committees, such as the Operational Resilience Committee or the Risk Committee, do not complete their responsibilities, they may fail to identify certain changes in risk and therefore fail to initiate processes that could minimize those risks. Ultimately, failure to minimize risks could result in LCH SA not having sufficient funds in place to recover from a Clearing Member default, which could in turn result in a disruption of clearing services. Thus, by making the ambit of the Committees and their responsibilities clearer, maintaining consistency between Committee responsibilities and Committee scopes, eliminating redundant text, improving the ToR accuracy, renaming items, and identifying where to find information, LCH SA promotes the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds which are in the custody or control of it or for which it is responsible.

Multiple proposed changes would also ensure that qualified individuals participate in LCH SA decision making. For example, LCH SA proposes that Article 2.1.2 of the ToR of the Operational Resilience Committee be revised to require that members of the Operational Resilience Committee have the relevant expertise required for the Committee to function properly as well as recent and relevant experience of the operations of LCH Group. LCH SA also

proposes changes to its definition of User Risk Committee members in Article 1.1.3 of the Risk Committee ToR which would add operational risk management to the list of subject matters in respect of which such Committee members should have significant expertise and experience. Additionally, LCH SA's proposal would allow CEO of LCH SA to approve trade venues which present no novel risk features and require no amendment of risk controls subject to the Risk Committee being notified of such approvals. The Proposed Rule Change would also strengthen or maintain the ability of Committees to carry out their responsibilities by ensuring that the appropriate Committees and individuals receive notice of certain reviews. For example, new Article 6.4 to the Risk Committee ToR would require the Risk Committee to be notified of the outcome of the annual independent validation of the counterparty credit scoring model in accordance with the Model Governance, Validation and Review Policy. Likewise, new Article 8.4 of the Risk Committee ToR would specify that the Risk Committee must be notified of the outcome of the annual independent validation of all margin models in accordance with the Model Governance, Validation and Review Policy.

Additionally, the Proposed Rule Change would strengthen the ability of Committees to carry out their responsibilities because the proposed change would protect confidential information and thereby would afford the Risk Committee the ability to obtain information. In proposed Article 1.6 of the Risk Committee ToR, LCH SA would specify that external Risk Committee members' consultations with other individuals within their organization under Article 1.6 are subject to restrictions set out in confidentiality agreements signed by the external member. By protecting confidential information in this instance, the proposed rule change would enhance and improve the information and recommendations provided to the Risk Committee by its external members.

Ensuring that the individuals making decisions related to the administration of a clearing agency are qualified to make those decisions, receive relevant information from important notices, and receive quality information and informed recommendations from external stakeholders helps decrease the chance of those decisions being misinformed or wrong, which in turn helps decrease the chance that a misinformed or wrong decision increases the possibility of a Clearing Member default or interruption to the

clearing agency's functions. As such, by ensuring that qualified individuals participate in LCH SA decision making, that notices are received, and that external members are able to consult with other individuals in their organizations under certain circumstances, LCH SA promotes the prompt and accurate clearance and settlement of securities transactions and assures the safeguarding of securities and funds which are in the custody or control of it or for which it is responsible.

The Proposed Rule Change would also delete text from Article 10 of the ToR of the Board requiring meeting minutes to be translated to French. This requirement is now unnecessary due to the Board's composition. Board members would still approve the minutes, as required by the Board ToR, which will help ensure that they continue to carry out their responsibilities to ensure that the minutes accurately reflect meetings of the Board, which in turn will help LCH SA continue to ensure that LCH SA and its Board continue to comply with applicable rules and regulations and have accurate information to address potential defaults, trading disruptions, and other issues that could affect LCH SA's ability to support the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible.

For the foregoing reasons, the Commission finds that the Proposed Rule Change is consistent with the requirements of Section 17A(b)(3)(F) of the Act.⁹⁰

C. Consistency With Rule 17Ad-22(e)(2)(v) Under the Act

Rule 17Ad-22(e)(2)(v) requires covered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to specify clear and direct lines of responsibility.⁹¹ Based on its review of the record, and for the reasons discussed below, the Commission believes that LCH SA's changes are consistent with Section 17Ad-22(e)(2)(v) of the Act.⁹²

Several of LCH SA's proposed changes specify clear and direct lines of responsibility. Proposed Article 1.3 of the Operational Resilience Committee ToR would require that the Operational Resilience Committee contribute to the review of certain Operational Resilience

⁹⁰ 15 U.S.C. 78q-1(b)(3)(F).

⁹¹ 17 CFR 240.17Ad-22(e)(2)(v).

⁹² 17 CFR 240.17Ad-22(e)(2)(v).

policies, including the Technology Risk Policy and the Information Security and Cyber Risk Policy. Proposed Article 9.7 of the Risk Committee ToR would require the Risk Committee to review default management fire drill exercise reports to assess LCH SA's default management process. Proposed Article 3.3.4(a) of the Audit Committee ToR would require the Audit Committee to approve the compliance policies and be informed of any breaches. Proposed Article 12(e) of the ToR of the Board would require the Board to approve LCH SA's Wind Down plans. Numerous additional examples can be found throughout LCH SA's proposal.

The Commission finds, therefore, that the Proposed Rule Change is consistent with the requirements of Rule 17Ad-22(e)(2)(v) under the Act.⁹³

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed

Rule Change is consistent with the requirements of the Act, and in particular, Sections 17A(b)(3)(C)⁹⁴ and 17A(b)(3)(F) of the Act⁹⁵ and Rule 17Ad-22(e)(2)(v).⁹⁶

It is therefore ordered pursuant to Section 19(b)(2) of the Act that the Proposed Rule Change (SR-LCH SA-2024-003) be, and hereby is, approved.⁹⁷

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.⁹⁸

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024-15194 Filed 7-10-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

SBIC License Issuance

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Small Business Investment Company (SBIC) licenses.

Pursuant to the authority granted to the United States Small Business Administration under section 301(c) of the Small Business Investment Act of 1958, as amended, to grant Small Business Investment Company licenses under the Small Business Investment Company Program, this notice satisfies the requirement effective August 17, 2023 under 13 CFR 107.501(a) to publish in the **Federal Register** the names of SBICs with date of licensure and Total Intended Leverage Commitments. The following SBICs received SBIC licenses from January 1, 2024, through June 30, 2024:

SBIC fund name	Date of licensure	Leverage tiers ¹
Brookside Capital Fund V SBIC, L.P	1/3/2024	2.0x
Skyline Investors I, L.P	3/21/2024	1.5x
Providence Investment Partners I, L.P	4/3/2024	2.0x
Midwest Mezzanine Fund VII SBIC, L.P	4/5/2024	2.0x
Salem Investment Partners VI, Limited Partnership	4/12/2024	2.0x
Sound Growth Partners Fund I, L.P	5/6/2024	2.0x
Mizzen Capital III, L.P	5/29/2024	2.0x
Source Capital Credit Opportunities V, L.P	6/5/2024	1.5x
Renovus Capital Partners IV SBIC, L.P	6/14/2024	2.0x

¹ Maximum amount of Leverage expressed as a multiple of Leverageable Capital pursuant to 13 CFR 107.1150. For all SBIC Licensees that submitted a Management Assessment Questionnaire after August 17, 2023, the Notice of SBIC Licenses will include the Total Intended Leverage Commitment at the time of Licensure.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration.

[FR Doc. 2024-15224 Filed 7-10-24; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice:12453]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “Siena: The Rise of Painting, 1300–1350” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the

exhibition “Siena: The Rise of Painting, 1300–1350” at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA-5), Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made

pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024-15253 Filed 7-10-24; 8:45 am]

BILLING CODE 4710-05-P

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹⁸ 17 CFR 200.30-3(a)(12).

⁹³ 17 CFR 240.17Ad-22(e)(2)(v).

⁹⁴ 15 U.S.C. 78q-1(b)(3)(C).

⁹⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁹⁶ 17 CFR 240.17Ad-22(e)(2)(v).

⁹⁷ In approving the Proposed Rule Change, the Commission considered the proposal's impacts on

DEPARTMENT OF STATE

[Public Notice:12452]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: “Cecily Brown: Themes and Variations” Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition “Cecily Brown: Themes and Variations” at the Dallas Museum of Art, Dallas, Texas; the Barnes Foundation, Philadelphia, Pennsylvania; and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–15257 Filed 7–10–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 559]

Re-Delegation of the Functions and Authorities Pertaining to the United States National Authority**ACTION:** Delegation of authority.

SUMMARY: The State Department is publishing a Delegation of Authority signed by Under Secretary of State for Arms Control and International Security on June 25, 2024.

SUPPLEMENTARY INFORMATION: Bonnie Jenkins, Under Secretary of State for Arms Control and International Security, signed the following “Redelegation of Authority to the Assistant Secretary, Bureau of Arms Control, Deterrence, and Stability, the Principal Deputy Assistant Secretary, Bureau of Arms Control, Deterrence, and Stability, and the Director, Office of Chemical and Biological Weapons Affairs, Bureau of Arms Control, Deterrence, and Stability” on June 25, 2024. The State Department maintains the original document.

(Begin text.)

By virtue of the authority vested in the Secretary of State by the laws of the United States, including by section 101 of the Chemical Weapons Convention Implementation Act of 1998, Division I of Public Law 105–277, codified at 22 U.S.C. 6711(c), and delegated by section 2(a)(12) of Delegation of Authority 293–2, dated October 23, 2011, I hereby re-delegate to the Assistant Secretary, Bureau of Arms Control, Deterrence, and Stability, the Principal Deputy Assistant Secretary, Bureau of Arms Control, Deterrence, and Stability, and the Director, Office of Chemical and Biological Weapons Affairs, Bureau of Arms Control, Deterrence, and Stability, to the extent authorized by law, the authorities and functions pertaining to the Director of the United States National Authority.

A reference in this delegation of authority to a statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

The Secretary of State, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Arms Control and International Security may at any time exercise any function delegated by this delegation of authority. Delegation of Authority 333, dated September 24, 2010, is hereby rescinded.

This delegation of authority shall be published in the **Federal Register**.

(End text.)

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2024–15254 Filed 7–10–24; 8:45 am]

BILLING CODE 4710–27–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36792]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

Union Pacific Railroad Company (UP), a Class I railroad, has filed a verified notice of exemption under 49 CFR 1180.2(d)(8) for the acquisition of temporary overhead trackage rights over an approximately 51.7-mile rail line of BNSF Railway Company (BNSF) between milepost 579.3 on BNSF’s Creek Subdivision near Mill Creek, Okla., and milepost 631.0 on BNSF’s Madill Subdivision near Joe Junction, Tex., pursuant to the terms of a written temporary trackage rights agreement dated December 31, 2023 (Agreement).¹

UP states that the sole purpose of the temporary trackage rights is to allow UP to move loaded and empty unit ballast trains, which will be used solely for UP maintenance-of-way projects. UP states that the temporary trackage rights will expire on December 31, 2024.

The transaction may be consummated on or after July 25, 2024, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of

¹ A copy of the Agreement was attached as an exhibit to the verified notice.

the exemption. Petitions for stay must be filed no later than July 18, 2024 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36792, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on UP's representative, Tanya S. Spratt, Sr. General Attorney, Union Pacific Railroad Company, 1400 Douglas Street, Stop 1580, Omaha, NE 68179.

According to UP, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: July 8, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,
Clearance Clerk.

[FR Doc. 2024-15248 Filed 7-10-24; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2024-0050]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 9, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0050 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>.

Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Chip Millard, Reduction of Truck Emissions at Port Facilities Grant Program Manager, 202-366-4415, Office of Transportation Management (HOTM), Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:30 a.m. to 6:00 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Reduction of Truck Emissions at Port Facilities Grant Program.

Background: The Bipartisan Infrastructure Law (BIL) created the Reduction of Truck Emissions at Port Facilities (RTEPF), which includes a discretionary grant program that was allocated up to \$400 million over the five-year life of the BIL. The BIL provides the RTEPF Grant Program funding to test, evaluate, and deploy projects that reduce port-related emissions from idling trucks, including through the advancement of port electrification and improvements in efficiency, focusing on port operations, including heavy-duty commercial vehicles, and other related projects.

Respondents: Eligible applicants for RTEPF Grant Program funds are entities that (1) have authority over, operate, or utilize port facilities and/or intermodal port transfer facilities, (2) have authority over areas within or adjacent to ports and intermodal port transfer facilities, or (3) will test and/or evaluate technologies that reduce truck emissions at port facilities and/or intermodal port transfer facilities.

Frequency: RTEPF Grant Program Notices of Funding Opportunity (NOFOs) will be issued annually during the life of the BIL, though some years of funding created for the program may be combined, resulting in a multi-year NOFO.

Estimated Average Burden per Response: 40 hours per respondent per application.

Estimated Total Annual Burden Hours: In the first round of the RTEPF Grant Program (FY 2022-2023 NOFO), approximately 50 applications (both complete and incomplete combined)

were received. It is expected a similar number of applications will be submitted for the FY 2024 NOFO, creating an estimated total of 2000 annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 8, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024-15249 Filed 7-10-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review.

SUMMARY: The FHWA, on behalf of the FDOT, is issuing this notice to announce actions taken by FDOT and other Federal Agencies that are final agency actions. These actions relate to the proposed State Road (SR) 29 roadway project extending 15.6 miles from Oil Well Road (southern terminus) to SR 82 (northern terminus) in unincorporated Collier County, Florida. These actions grant licenses, permits, or approvals for the project.

DATES: By this notice, the FHWA, on behalf of FDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before December 9, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such

claim, then that shorter time period still applies.

ADDRESSES: The Environmental Assessment with Finding of No Significant Impact prepared for the project and additional project documents can be viewed and downloaded from the project website at: <https://sr29collier.com>, or by contacting FDOT Office of Environmental Management, 605 Suwannee Street, MS 37, Tallahassee, Florida 32399, during normal business hours are 8:00 a.m. to 5:00 p.m. (Eastern Standard Time), Monday through Friday, except State holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Marshall, P.E., Director, FDOT Office of Environmental Management, FDOT; telephone (850) 414-4316; email: Jennifer.Marshall@dot.state.fl.us.

SUPPLEMENTARY INFORMATION: Effective December 14, 2016, and as subsequently renewed on May 26, 2022, the FHWA assigned, and the FDOT assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that FDOT and other Federal Agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, or approvals for the proposed improvement highway project. The actions by FDOT and other Federal Agencies on the project, and the laws under which such actions were taken are described in the Environmental Assessment with Finding of No Significant Impact approved on June 19, 2024 and in other project records for the listed project. The Environmental Assessment with Finding of No Significant Impact and other documents for the listed project are available by contacting FDOT at the address provided above.

The project subject to this notice is:

Project Location: The location of the proposed action is a section of State Road (SR) 29 between Oil Well Road and SR 82 in Collier County, Florida which traverses the eastern portion of Collier County and the unincorporated community of Immokalee. This roadway project includes the proposed widening of existing two-lane undivided sections of SR 29 to four lanes from Oil Well Road to south of Farm Worker Way and from north of Westclox Street/New Market Road W to SR 82, as well as the add a four-lane segment on new alignment from north of Seminole Crossing Trail to north of Westclox Street/New Market Road W. No improvements are proposed to existing SR 29 through the downtown area of Immokalee as part of this project.

Project Actions: This notice applies to the Environmental Assessment with Finding of No Significant Impact and all other Federal Agency licenses, permits, or approvals for the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. **General:** National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal-Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. **Air:** Clean Air Act (CAA) [42 U.S.C. 7401-7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. **Noise:** Noise Control Act of 1972 [42 U.S.C. 4901-4918]; 23 CFR part 772.

4. **Land:** Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302-200310].

5. **Wildlife:** Endangered Species Act (ESA) [16 U.S.C. 1531-1544 and 1536]; Marine Mammal Protection Act [16 U.S.C. 1361-1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)-757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703-712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801-1891d], with Essential Fish Habitat requirements [16 U.S.C. 1855(b)(2)].

6. **Historic and Cultural Resources:** Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)-470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C. 312501-312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013; 18 U.S.C. 1170].

7. **Social and Economic:** Civil Rights Act of 1964 [42 U.S.C. 2000d-2000d-1]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].

8. **Wetlands and Water Resources:** Clean Water Act (Section 319, Section 401, Section 404) [33 U.S.C. 1251-1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501-3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451-1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f-300j-26]; Rivers and Harbors Act of 1899 [33 U.S.C. 401-406]; Wild and Scenic Rivers Act [16 U.S.C. 1271-1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and

133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001-4130].

9. **Hazardous Materials:** Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601-9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901-6992(k)].

10. **Executive Orders:** E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: July 3, 2024.

Karen M. Brunelle,
Director, Office of Project Development,
Federal Highway Administration,
Tallahassee, Florida.

[FR Doc. 2024-15223 Filed 7-10-24; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2010-0029]

The National Railroad Passenger Corporation's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on July 1, 2024, the National Railroad Passenger Corporation (Amtrak) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP) to request approval for a planned positive train control (PTC) system outage of its Mixed System PTC system for maintenance purposes during the month of August 2024. As this RFA may involve a request for FRA's approval of proposed material

modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on Amtrak's RFA to its PTCSP.

DATES: FRA will consider comments received by July 31, 2024. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES:

Comments: Comments may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA-2010-0029. For convenience, all active PTC dockets are hyperlinked on FRA's website at <https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets>. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information.

FOR FURTHER INFORMATION CONTACT:

Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816-516-7168, email: Gabe.Neal@dot.gov.

SUPPLEMENTARY INFORMATION: In general, title 49 United States Code (U.S.C.) section 20157(h) requires FRA to certify that a host railroad's PTC system complies with title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal or train control system. Accordingly, this notice informs the public that, on July 1, 2024, Amtrak submitted an RFA to its PTCSP for its Mixed System PTC system, which is comprised of the Interoperable Electronic Train Management System (I-ETMS), seeking FRA's approval for a temporary outage of the system to perform an update to the Back Office Server (BOS) in August

2024. That RFA is available in Docket No. FRA-2010-0029.

Interested parties are invited to comment on Amtrak's RFA to its PTCSP by submitting written comments or data. During FRA's review of Amtrak's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. See 49 CFR 236.1021; see also 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to <https://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <https://www.transportation.gov/privacy>. See <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov. To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2024-15270 Filed 7-10-24; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of a person whose property and interests in property have been unblocked and who has been removed from the Specially Designated Nationals and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Bradley T. Smith, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Action(s)

A. On July 8, 2024, OFAC removed from the SDN List the person listed below, whose property and interests in property were blocked pursuant to section 1(a)(iii) of Executive Order 13694 of April 1, 2015, "Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities," 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, "Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities," 82 FR 1, 3 CFR, 2016 Comp., p. 659 (E.O. 13694, as amended). On July 8, 2024, OFAC determined that circumstances no longer warrant the inclusion of the following person on the SDN List under this authority. This person is no longer subject to the blocking provisions of section 1(a)(iii) of E.O. 13694, as amended.

1. TSAREVA, Marina Igorevna, Russia; DOB 09 Nov 1973; POB Krasnoyarsk, Russia; nationality Russia; Gender Female; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201; Passport 711002398 (Russia) (individual) [CYBER2] (Linked To: DIVETECHNOSERVICES; Linked To: VELA-MARINE LTD.)

Dated: July 8, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024-15231 Filed 7-10-24; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Requesting Comments on Internal Revenue Service Advisory Council Membership Application**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning membership application for Internal Revenue Service Advisory Council.

DATES: Written comments should be received on or before September 9, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Molly Stasko, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB Control Number 1545-1791 or form number 12339 in the Subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, (202) 317-5744, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at sara.l.covington@irs.gov.

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Internal Revenue Service Advisory Council Membership Application.

OMB Number: 1545-1791.

Form Number: 12339.

Abstract: The Federal Advisory Committee Act (FACA) requires that committee membership be fairly balanced in terms of points of view represented and the functions to be performed. As a result, members of specific committees often have both the expertise and professional skills that parallel the program responsibilities of their sponsoring agencies. Selection of committee members is based on the FACA's requirements and the potential member's background and

qualifications. Therefore, an application is needed to ascertain the desired skills set for membership. The IRS will also use the information to perform Federal income tax, background, and practitioner checks as required of all members and applicants to the Committee or Council. Information provided will be used to qualify or disqualify individuals to serve as members.

Current Actions: Minor changes were made to form 12239 that included in Part 1—there are now 6 check boxes instead of 5, and Part V—a check box has been added. Changes to the burden estimates are due to the most current filing data.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Response: 1 hr. 30 min.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 08, 2024.

Sara L. Covington,
IRS Tax Analyst.

[FR Doc. 2024-15267 Filed 7-10-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Credit for Renewable Electricity Production and Publication of Inflation Adjustment Factor and Reference Price for Calendar Year 2024**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of publication.

SUMMARY: The 2024 inflation adjustment factor and reference price are used in determining the availability of the credit for renewable electricity production under section 45 (section 45 credit).

FOR FURTHER INFORMATION CONTACT: Charles Hyde, CC:PSI:6, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, (202) 317-6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The 2024 inflation adjustment factor and reference price apply to calendar year 2024 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources.

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2024 for qualified energy resources is 1.9499.

Reference Price: The reference price for calendar year 2024 for facilities producing electricity from wind is 3.15 cents per kilowatt hour. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy have not been determined for calendar year 2024.

Phaseout Calculation: Because the 2024 reference price for electricity produced from wind (3.15 cents per kilowatt hour) does not exceed 8 cents multiplied by the inflation adjustment factor (1.9499), the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2024. For electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy, the phaseout of the credit provided in section 45(b)(1) does not

apply to such electricity sold during calendar year 2023.

Inflation Reduction Act Amendments: Section 45 was amended by section 13101 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA). The IRA changed the manner in which the section 45 credit amounts are calculated for any qualified facility placed in service after December 31, 2021. In the case of any qualified facility placed in service before January 1, 2023, the section 45 credit amounts are determined under the calculation rules provided in section 45 prior to the IRA amendments.

As amended by the IRA, section 45(b)(6)(A) provides that, in the case of any qualified facility that satisfies the requirements of section 45(b)(6)(B), the credit amount determined under section 45(a) (determined after the application of section 45(b)(1) through (5) and without regard to section 45(b)(6)) is equal to such amount multiplied by 5. A qualified facility satisfies the requirements of section 45(b)(6)(B) if it is placed in service after December 31, 2021, and it is one of the following: (i) a facility with a maximum net output of less than 1 megawatt (as measured in alternating current); (ii) a facility the construction of which began prior to January 29, 2023, which is the date that is 60 days after the publication of the guidance with respect to the requirements of section 45(b)(7)(A) (prevailing wage requirements) and section 45(b)(8) (apprenticeship requirements); or (iii) a facility that satisfies the requirements of section 45(b)(7)(A) and (8).¹ The IRA also added bonus credit amounts with respect to qualified facilities placed in service after December 31, 2022, that meet domestic content requirements under section 45(b)(9)² or energy community requirements under section 45(b)(11).³

The IRA amended the phaseout of the section 45 credit for wind facilities under section 45(b)(5) such that it does not apply to facilities placed in service after December 31, 2021. The IRA also added a new phaseout of the section 45 credit under section 45(b)(10) in the case of qualified facilities placed in service after December 31, 2022, for

taxpayers making an elective payment election under section 6417. The IRA also amended the credit amount reduction under section 45(b)(3) in the case of qualified facilities the construction of which began after August 16, 2022.

The IRA amended section 45(d)(4) to restore the section 45 credit for electricity produced in solar energy facilities in the case of qualified facilities placed in service after December 31, 2021, and the construction of which begins before January 1, 2025. Effective for facilities placed in service after December 31, 2022, the IRA (1) removed the one-half reduction of the credit amount under section 45(b)(4)(A) for qualified hydropower facilities and marine and hydrokinetic renewable energy facilities and (2) amended the definition of marine and hydrokinetic renewable energy under section 45(c)(10) and the definition of a marine and hydrokinetic renewable energy facility under section 45(d)(11). The IRA also extended certain deadlines in the definitions under section 45(d) for wind facilities, closed-loop biomass facilities, open-loop biomass facilities, geothermal facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities.

Credit Amount for a Qualified Facility Placed in Service before January 1, 2022: As required by section 45(b)(2), the 1.5 cent amount provided in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under section 45(b)(2) is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) for such calendar year (before rounding to the nearest 0.1 cent as required by section 45(b)(2)) to be reduced by one-half.⁴

Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2024 determined under section 45(a) is 2.9 cents per kilowatt hour on the sale of electricity produced in any qualified

facility placed in service before January 1, 2022, from the qualified energy resources of wind, closed-loop biomass, and geothermal energy, and 1.5 cents per kilowatt hour on the sale of electricity produced in any qualified facility placed in service before January 1, 2022, from the qualified energy resources of open-loop biomass, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy.

Credit Amount for a Qualified Facility Placed in Service after December 31, 2021: As required by section 45(b)(2), the 0.3 cent amount provided in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If the 0.3 cent amount as adjusted for inflation is not a multiple of 0.05 cent, the amount is rounded to the nearest multiple of 0.05 cent. In the case of electricity produced in open-loop biomass facilities, landfill gas facilities, trash facilities, qualified hydropower facilities, and marine and hydrokinetic renewable energy facilities, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) for such calendar year (determined before rounding as required by section 45(b)(2)) to be reduced by one-half.

Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2024 determined under section 45(a) is 0.6 cents per kilowatt hour on the sale of electricity produced in any qualified facility placed in service after December 31, 2021, from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 0.3 cents per kilowatt hour on the sale of electricity produced in any qualified facility placed in service after December 31, 2021, from the qualified energy resources of open-loop biomass, landfill gas, and trash. The credit for renewable electricity production for calendar year 2024 determined under section 45(a) is also 0.3 cents per kilowatt hour on the sale of electricity produced in any qualified facility placed in service after December 31, 2021, and before January 1, 2023, from the qualified energy resources of qualified hydropower and marine and hydrokinetic renewable energy.

Credit Amount for Qualified Hydropower Facilities and Marine and Hydrokinetic Renewable Energy Facilities Placed in Service after December 31, 2022: The one-half reduction under section 45(b)(4)(A) no longer applies to qualified hydropower facilities and marine and hydrokinetic renewable energy facilities placed in

¹ See §§ 1.45–6, 1.45–7, 1.45–8, and 1.45–12 of the Income Tax Regulations for additional information regarding the requirements of section 45(b)(6)(B).

² See Notice 2023–38, 2023–22 I.R.B. 872 (May 12, 2023) and Notice 2024–41, IR–2024–140 (May 16, 2024), corrected at IR 2024–147 (May 24, 2024), for additional information regarding the domestic content bonus credit.

³ See Notice 2024–30, 2024–16 I.R.B. 878 (April 15, 2024), for additional information regarding the energy community bonus credit.

⁴ As amended by the IRA and discussed later in this notice, the one-half reduction under section 45(b)(4)(A) no longer applies to qualified hydropower facilities and marine and hydrokinetic renewable energy facilities placed in service after December 31, 2022.

service after December 31, 2022. Accordingly, under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2024 determined under section 45(a) is 0.6 cents per kilowatt hour on the sale of electricity produced in any qualified facility placed in service after December 31, 2022, from the qualified energy resources of qualified hydropower and marine and hydrokinetic renewable energy.

(Authority: 45(e)(2)(A) (26 U.S.C. 45(e)(2)(A)) of the Internal Revenue Code.)

Christopher T. Kelley,

Special Counsel to the Associate Chief Counsel, (Passthroughs and Special Industries).

[FR Doc. 2024–15226 Filed 7–10–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0067]

Agency Information Collection Activity Under OMB Review: Application for Automobile or Other Conveyance and Adaptive Equipment (Under 38 U.S.C. 3901–3904)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link www.reginfo.gov/public/do/PRAMain, select “Currently under Review—Open for Public Comments”, then search the list for the information collection by Title or “OMB Control No. 2900–0067.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202–461–8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Automobile or Other Conveyance and Adaptive Equipment (Under 38 U.S.C. 3901–3904) (VA Form 21–4502).

OMB Control Number: 2900–0067
https://www.reginfo.gov/public/do/PRAsearch.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4502 is used by veterans and servicepersons to apply for automobile or other conveyance benefits. Without the information solicited by this form, VA would be unable to determine eligibility, and benefits would not be properly paid.

No changes have been made to this form. The respondent burden has increased due to the estimated number of receivables averaged over the past year.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 37282, May 6, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 3,197 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 12,786 per year.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–15227 Filed 7–10–24; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

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Part II

Department of Homeland Security

Federal Emergency Management Agency

FEMA Policy: Federal Flood Risk Management Standard (FFRMS);

Updates to Floodplain Management and Protection of Wetlands

Regulations To Implement the Federal Flood Risk Management Standard;

Notice and Final Rule

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2023-0026]

RIN 1660-AB12

FEMA Policy: Federal Flood Risk Management Standard (FFRMS)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: The Federal Emergency Management Agency (FEMA) is announcing the availability of the final FEMA policy, *Federal Flood Risk Management Standard (FFRMS)*. This policy provides detail, consistent with applicable regulations, on applicability, processes, resources, and responsibilities for implementing the FFRMS as part of FEMA's 8-step decision making process for carrying out the directives of Executive Order 11988, Floodplain Management, as amended.

DATES: The announcement of this policy is published in the **Federal Register** on July 11, 2024. The policy will be effective on September 9, 2024.

FOR FURTHER INFORMATION CONTACT:

Portia Ross, Policy and Integration Division Director, Office of Environmental Planning and Historic Preservation, Resilience, DHS/FEMA, 400 C St. SW, Suite 313, Washington, DC 20472-3020. Phone: 202-709-0677; Email: fema-regulations@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: FEMA is issuing this policy complementary to 44 CFR part 9, Floodplain Management and Protection of Wetlands, which governs

FEMA's implementation of the Federal Flood Risk Management Standard (FFRMS). This policy facilitates implementation of FFRMS and bolsters the resilience of communities and Federal assets against the impacts of flooding.

Consistent with the final rule that is also published in today's edition of the **Federal Register**, this policy requires that FEMA determine the appropriate vertical flood elevation and corresponding horizontal FFRMS floodplain for Actions Subject to the FFRMS using either the Climate Informed Science Approach (CISA), the Freeboard Value Approach (FVA), or the 0.2 Percent Annual Chance Flood Approach (0.2PFA). Under the final policy, FEMA will determine the FFRMS flood elevation and corresponding FFRMS floodplain according to CISA for all locations where CISA is available where the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science exist. When using CISA, for non-critical actions the FFRMS floodplain will be at least as restrictive as the 1% annual chance (AC) flood elevation and corresponding horizontal floodplain,¹ and for critical actions the FFRMS floodplain will be at least as restrictive as the 0.2% AC flood elevation and

¹ In coastal areas Flood Insurance Rate Maps (FIRMs) and Flood Insurance Studies (FISs) provide 1% AC flood elevations that account for the effects of wave action. However, 0.2% AC flood elevations are generally stillwater elevations that do not account for the effects of wave action. In coastal areas, if the 0.2% AC flood elevation does not account for the effects of wave action, the FVA flood elevation must be used.

corresponding horizontal floodplain. For locations where CISA is not available and actionable, FEMA will determine the FFRMS elevation and FFRMS floodplain for non-critical actions by using the area that would be inundated by the lower of the 0.2% AC flood or +2-foot FVA. For critical actions, FEMA will determine the FFRMS elevation and FFRMS floodplain using the area that would be inundated by the higher of the 0.2% AC flood or +3-foot FVA. (For locations where information about the elevation and/or extent of the 0.2% AC floodplain is not available, the FFRMS floodplain will be the +3-foot FVA for critical actions and +2-foot FVA for non-critical actions).

This policy also outlines FEMA's process to identify actions that may receive substantial damage or substantial improvement determinations, requires consideration of natural features and nature-based approaches as alternatives to a proposed action, explains requirements to minimize flood risk, and encourages early coordination when multiple Federal agencies are jointly engaged in an action to ensure a consistent approach to determine which floodplain determination is applied.

Authority: Executive Order 11988, Floodplain Management, as amended and implementing regulations of 44 CFR part 9, among other authorities listed in the proposed policy.

Deanne B. Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024-15170 Filed 7-10-24; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 9

[Docket ID FEMA–2023–0026]

RIN 1660–AB12

Updates to Floodplain Management and Protection of Wetlands Regulations To Implement the Federal Flood Risk Management Standard

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: On October 2, 2023, the Federal Emergency Management Agency (FEMA) published a notice of proposed rulemaking (NPRM) and supplementary policy that proposed to implement the Federal Flood Risk Management Standard (FFRMS) and update the agency’s 8-step decision-making process for floodplain reviews by changing how FEMA defines a floodplain with respect to certain actions and how FEMA uses natural systems, ecosystem processes, and nature-based approaches when developing alternatives to locating a proposed action in the floodplain. After a careful review of the public comments received, FEMA is now issuing a final rule that implements the proposed rule, with some minor amendments.

DATES: This rule is effective September 9, 2024.

FOR FURTHER INFORMATION CONTACT: Portia Ross, Policy and Integration Division Director, Office of Environmental Planning and Historic Preservation, Resilience, DHS/FEMA, 400 C St. SW, Suite 313, Washington, DC 20472–3020. Phone: (202) 709–0677; Email: fema-regulations@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:

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- II. Background and Legal Authority
 - A. Executive Order 11988, “Floodplain Management”
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 - D. Executive Order 13690, the Federal Flood Risk Management Standard and Subsequent Amendments to Executive Order 11988, and Revisions to the 1978 Guidelines

- E. Substantive Components of the FFRMS
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I. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this regulatory action is to finalize a rulemaking that will improve the preparedness and resilience of communities and Federal assets against the increasing impacts of flooding. All Federal agencies, including FEMA, have long taken action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains when carrying out certain agency functions. Federal agencies accomplish this by applying the longstanding 8-step decision-making process to any action they take in floodplains to ensure they avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains, and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.

This framework was originally established in 1977 by Executive Order 11988, “Floodplain Management,” (42 FR 26951) which was issued in furtherance of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the National Flood Insurance Act of 1968 as amended (NFIA) (42 U.S.C. 4001 *et seq.*), and the Flood Disaster Protection Act of 1973, as amended (Flood Disaster Protection Act) (Pub. L. 93–234, 87 Stat. 975). Executive Order 11988 was supplemented by guidance called “Floodplain Management Guidelines” issued in 1978 by the U.S. Water Resources Council (“1978

Guidelines”).¹ FEMA implemented Executive Order 11988 in 1980 through the promulgation of regulations at 44 CFR part 9, “Floodplain Management and Protection of Wetlands,”² which applies the 8-step decision-making process to all actions FEMA directly takes and to all actions that it funds through grants to eligible State, local, Tribal, and territorial (SLTT) governments, certain private non-profits, and individuals and households for pre- and post-emergency or disaster-related projects.

The first step in the 8-step process is to determine whether the action FEMA proposes to take or fund will occur in a floodplain or wetland.³ Section (6)(c) of Executive Order 11988 defined the term “floodplain” to mean, at a minimum, “that area subject to a one percent or greater chance of flooding in any given year,” which is recognized as the “base floodplain.” Executive Order 11988 and the base floodplain definition remained unchanged from 1977 until 2015. In 2015, President Barack Obama amended Executive Order 11988 by adding a new flood risk reduction standard to the existing 8-step decision-making process to improve the Nation’s resilience against the increasing impacts of flooding.⁴ The flood risk reduction standard, called the Federal Flood Risk Management Standard (FFRMS), is a flexible framework to define the floodplain that allows agencies to choose among several approaches to expand the base floodplain to a higher vertical elevation and corresponding horizontal extent for all Federally

¹ 42 FR 6030, Feb. 10, 1978. A PDF copy of the 1978 Guidelines can be found at this link: <https://www.federalregister.gov/documents/1978-02-10/42-fr-6030> (last accessed Jan. 24, 2024).

² FEMA published an interim final rule on December 27, 1979 (44 FR 76510) and a final rule on September 9, 1980 (45 FR 59520). Note that this part also implements a related Executive Order 11990, “Protection of Wetlands.” See 42 FR 26961, May 25, 1977.

³ Any action FEMA takes in a floodplain or wetland, including its provision of grants for disaster assistance, undergoes an analysis pursuant to Executive Orders 11988 and 11990 (unless the action is specifically exempted from the requirements of the Orders). The grant recipient, therefore, generally provides information to FEMA about the practicability of alternatives outside the floodplain and wetland and other information to assist in the analysis.

⁴ Executive Order 13690, “Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input.” 80 FR 6425, Feb. 4, 2015. In 2017, President Donald Trump revoked the amendments to Executive Order 11988. See Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Project,” 82 FR 40463, Aug. 24, 2017. In 2021, President Joseph Biden reinstated the amendments. See Executive Order 14030, “Climate Related Financial Risk,” 86 FR 27967, May 25, 2021.

funded projects. Federally funded projects are defined as actions where Federal funds are used for new construction, substantial improvement, or repairs to address substantial damage to structures and facilities.⁵ The amendments also direct agencies to use natural systems, ecosystem processes, and nature-based approaches when developing alternatives to locating the action in the floodplain. The Water Resources Council then updated the 1978 Guidelines and issued the “Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, ‘Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input’” (“Revised Guidelines”)⁶ to provide additional information on the use of the FFRMS.

FEMA first partially implemented the FFRMS in its grant programs through policy using an interim approach that applied higher elevation requirements to eligible projects in existing floodplains.⁷ FEMA then proposed to fully implement the FFRMS in its October 2, 2023 NPRM and supplementary policy.⁸ FEMA proposed to prioritize the use of the Climate-Informed Science Approach (CISA) in its FFRMS implementation. The CISA establishes the required vertical elevation and corresponding horizontal floodplain, through the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science, in accordance with the Revised Guidelines. When such data is

not available, FEMA’s NPRM and supplementary policy proposed the use of other approaches depending on the criticality of the action. FEMA also proposed to require the use of natural systems, ecosystem processes, and nature-based approaches where possible.

FEMA has authority to require application of the FFRMS as a condition of funding in its grant programs based on the grant programs’ authorizing statutes. Congress granted FEMA the authority to provide Federal assistance through multiple grant programs under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act),⁹ the NFIA,¹⁰ the Homeland Security Act of 2002,¹¹ the Federal Fire Prevention and Control Act of 1974,¹² the Earthquake Hazards Reduction Act of 1977,¹³ and various other appropriations acts. Under each of these authorities, FEMA may set grant eligibility criteria consistent with the respective purposes of such programs and FEMA’s mission, including to protect Federal investments from the risks of further damage.¹⁴ Under the Stafford Act and the NFIA, which authorize the programs that fund the

⁹ 42 U.S.C. 5121 *et seq.*

¹⁰ 42 U.S.C. 4001 *et seq.*

¹¹ 6 U.S.C. 101 *et seq.*; *see also* 6 U.S.C. 314(a)(12), which specifically charges the Administrator with supervising various grant programs authorized under the HSA. Such grant programs have long been governed by floodplain management regulations at 44 CFR part 9, *see, e.g.*, 44 FR 76510 (Dec. 27, 1979), 45 FR 59520 (Sept. 9, 1980). *See also, e.g.*, 2 CFR 200.300(a) (directing Federal awarding agencies to manage and administer Federal awards in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements including, but not limited to, those protecting public welfare and the environment; and requiring the Federal awarding agency to communicate to the non-Federal entity all relevant public policy requirements, and incorporate them either directly or by reference in the terms and conditions of the Federal award.).

¹² 15 U.S.C. 2229 and 2229a.

¹³ 42 U.S.C. 7701 *et seq.*

¹⁴ *See, e.g.*, 6 U.S.C. 609 (granting FEMA approval authority over grant funds for construction awards under its Homeland Security Grant Program, State Homeland Security Grant Program, Urban Area Security Initiative, Operation Stonegarden, Tribal Homeland Security Grant Program, and Nonprofit Security Grant Program); 6 U.S.C. 1182(d)(1) (granting DHS the authority to determine the grant requirements for the Intercity Bus Security Grant Program); 6 U.S.C. 1163(c)(1) (granting FEMA the authority to determine the grant requirements for the Intercity Passenger Rail grant program); 46 U.S.C. 70101 (granting DHS approval authority over grant funds for construction awards under the Port Security Grant Program); 6 U.S.C. 1135(c)(1) (granting DHS the authority to determine the grant requirements for the Transit Security Grant Program); 33 U.S.C. 467f–2(c)(2)(A) (granting FEMA the authority to set the minimum eligibility requirements for the Rehabilitation of High Hazard Dam Program).

majority of the actions subject to the FFRMS, FEMA has general rulemaking authority.¹⁵ Further, FEMA has explicit authority under the Stafford Act to set the minimum standards for safe land use and construction standards required in the repair or construction of private and public facilities.¹⁶

This rule is an important first step toward mitigating future flood risk that will ultimately benefit communities by allowing them to recover from future disasters more efficiently and effectively. The United States is experiencing increased flooding and flood risk from changing conditions.¹⁷ The full extent of future changes in flood risk has not yet been estimated across the full inventory of Federal, State, local, Tribal, and territorial properties. However, in a survey of Federal properties alone, an assessment identified over 40,000 individual Federal buildings and structures with a combined replacement cost of \$81 billion (in 2020 dollars) located in the current 1 percent floodplain and approximately 160,000 structures with a total replacement cost of \$493 billion (in 2020 dollars) located in the current 0.2 percent floodplain.¹⁸ Approximately 10,250 individual Federal buildings and structures were identified in coastal areas with a combined replacement cost of \$32.3 billion that would be severely impacted by an eight-foot sea-level rise scenario and over 12,195 individual Federal buildings and structures were identified with a combined replacement cost of over \$43.7 billion under a ten-foot “worst case” sea level rise scenario.¹⁹ The Federal fiscal exposure presented above can be reduced by enhancing resilience. This final rule will enhance resilience by ensuring that actions subject to the FFRMS are designed to be resilient to both current and future flood risks to minimize the impact of floods on human health, safety, and welfare and to protect Federal investments by reducing the risk of flood loss.

¹⁵ *See* 42 U.S.C. 5164; 42 U.S.C. 4128(a) and (b).

¹⁶ 42 U.S.C. 5165a(a)(1)–(2).

¹⁷ As a result of climate change, flood events are on the rise. Climate change is increasing flood risk through (1) more “extreme” rainfall events,” caused by a warmer atmosphere holding more water vapor and changes in regional precipitation patterns; and (2) sea-level rise. *See* Rob Bailey, Claudio Saffioti, and Sumer Drall, *Sunk Costs: The Socioeconomic Impacts of Flooding 3 and 8*, Marsh McLennan (2021).

¹⁸ Federal Budget Exposure to Climate Risk. OMB Assessment found https://www.whitehouse.gov/wp-content/uploads/2022/04/ap_21_climate_risk_fy2023.pdf (last accessed Jan. 24, 2024).

¹⁹ *Id.*

⁵ *See* “Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,” 80 FR 64008 (Oct. 22, 2015) (providing notice of the availability of the Revised Guidelines in the docket for the rulemaking at <https://www.regulations.gov/document/FEMA-2015-0006-0358> (main content) and <https://www.regulations.gov/document/FEMA-2015-0006-0372> (appendices)) also available at https://www.fema.gov/sites/default/files/documents/fema_10082015.pdf (last accessed Mar. 11, 2024).

⁶ 80 FR 64008, Oct. 22, 2015.

⁷ *See* FEMA Policy 104–22–003, “Partial Implementation of the Federal Flood Risk Management Standard for Public Assistance (Interim),” June 3, 2022, found at https://www.fema.gov/sites/default/files/documents/fema_fp-104-22-0003-partial-implemetnaton-ffrms-pa-interim.pdf (last accessed Jan. 24, 2024) and FEMA Policy 206–21–003–0001, “Partial Implementation of the Federal Flood Risk Management Standard for Hazard Mitigation Assistance Program,” Dec. 7, 2022 found at https://www.fema.gov/sites/default/files/documents/fema_policy-fp-206-21-003-0001-implementation-ffrms-hma-program_122022.pdf (last accessed Jan. 24, 2024).

⁸ 88 FR 67870, Oct. 2, 2023; 88 FR 67697, Oct. 2, 2023.

B. Summary of the Notice of Proposed Rulemaking (NPRM)

On October 2, 2023, FEMA published the NPRM “Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard.”²⁰ FEMA also published “FEMA Proposed Policy: Federal Flood Risk Management Standard (FFRMS)” with the proposed rule.²¹ The proposed rule sought to change how FEMA defines a floodplain with respect to certain actions taken by the agency and require that FEMA use natural systems, ecosystem process, and nature-based approaches, where possible, when developing alternatives to locating a proposed agency action in the floodplain.

The FFRMS is a flood resilience standard that is required for Federally funded projects and provides a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains and wetlands. For actions subject to the FFRMS, the NPRM proposed to update the definition of “floodplain” to the definition used in the Revised Guidelines, which allows the agency to establish the floodplain using any of the following three approaches or a fourth approach resulting from any other method in an update to the FFRMS:

- *Approach 1: Climate-Informed Science Approach (CISA):* Utilizing the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science;
- *Approach 2: Freeboard Value Approach (FVA):* The elevation and corresponding horizontal floodplain that result from using the freeboard²²

value, reached by adding 2 feet to the base flood elevation (BFE) for non-critical actions (+2' FVA) and from adding 3 feet to the BFE for critical actions (+3' FVA).

- *Approach 3: 0.2-percent-annual-chance Flood Approach (0.2PPFA):* 0.2 percent annual chance flood (also known as the 500-year flood); or
- *Approach 4:* the elevation and flood hazard area that result from using any other method identified in an update to the FFRMS.

In many cases, each of these approaches would result in a larger floodplain and a requirement to design projects to be resilient at a higher vertical elevation. For actions that do not meet the definition of an action subject to the FFRMS, FEMA would continue to use the historical floodplain definition, with minor clarifying revisions to help stakeholders better understand the terminology. The NPRM further proposed the use, where possible, of natural systems, ecosystem processes, and nature-based approaches in the development of alternatives for all actions proposed in a floodplain. FEMA proposed other edits to 44 CFR part 9, including edits to clarify the applicability of 44 CFR part 9 to specific FEMA programs and update the monetary thresholds in § 9.5, edits to incorporate the use of the internet in public notice requirement in § 9.8, edits to consolidate temporary housing requirements in § 9.13, and other clarifying edits to update citations and remove outdated terminology.

C. Summary of Changes From the NPRM to the Final Rule

In this final rule, FEMA adopts the changes proposed in the NPRM and FFRMS policy with clarifications in consideration of the relevant comments.

management. See <https://www.fema.gov/glossary/freeboard> (last accessed June 11, 2024).

Consistent with comments received, FEMA’s edits in this final rule add a Federal agency (the National Park Service) to the best available information sources list and incorporate the use of Indigenous Knowledge by adding Indian Tribal governments to that list. The best available information sources list appears at 44 CFR 9.7(c)(3). The list is a non-exhaustive list of resources that FEMA may use to make floodplain determinations. Additional clarifying edits are included in §§ 9.5 and 9.7. The edits to the FFRMS policy accompanying this final rule clarify the use of the 0.2PPFA in coastal areas and clarify FEMA’s use of the Federal Flood Risk Management Floodplain Determination Job Aid (FFRMS Job Aid). FEMA describes these changes in detail below.

D. Impacts of the Final Rule

FEMA estimated the total impacts of this rule by analyzing the impact of the FVA, 0.2PPFA and CISA for FEMA’s Public Assistance (PA), Individual Assistance (IA), and Hazard Mitigation Assistance (HMA) grant programs. FEMA did so by examining the number of projects that would be subject to the proposed requirements in the first 10 years after the rule’s publication.²³ FEMA’s analysis focused on the costs, benefits, and transfer payments (*i.e.*, impacts on FEMA grants) that would result over a 50-year period from applying the requirements of the rule to those projects, for a total period of analysis spanning 60 years. Tables 1 and 2 show the total impacts under the three approaches for each of the affected programs.

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²³ FEMA used an average of the number of affected projects during the prior 10-year period to estimate the average annual impacts of the future 10-year period.

²⁰ 88 FR 67870, Oct. 2, 2023.

²¹ 88 FR 67697, Oct 2, 2023.

²² Freeboard is a factor of safety usually expressed in feet above a flood level for purposes of floodplain

Table 1: Summary of 60-Year Costs, Transfers, and Benefits by Approach and Program for Affected Projects in Years 1-10 (Low Estimate, 2022\$)

Costs ²⁴	Undiscounted	3% Discount Rate		7% Discount Rate	
		Present Value	Annualized	Present Value	Annualized
CISA (primary) (+5-ft)	\$149,215,620	\$127,283,949	\$4,599,146	\$104,802,806	\$7,465,023
PA	\$104,341,798	\$89,005,671	\$3,216,038	\$73,285,315	\$5,220,056
IA	\$1,681,740	\$1,434,557	\$51,835	\$1,181,184	\$84,135
HMA	\$43,192,063	\$36,843,704	\$1,331,272	\$30,336,295	\$2,160,831
FVA	\$756,606,840	\$645,400,983	\$23,320,247	\$531,408,984	\$37,851,850
0.2PFA	\$43,407,580	\$37,027,545	\$1,337,915	\$30,487,667	\$2,171,613
FEMA Admin	\$7,752,811	\$6,700,641	\$242,114	\$5,617,336	\$400,118
Not Quantified	Not Estimated: Increased resilience standard for approximately 26,985 facility projects over 10 years, Additional costs for Adding Requirements to Buildings with Basements, Diversion of Projects Out of the Floodplain, Lifecycle maintenance costs for floodproofing, and Project Delays and Forgone Projects				
Transfer Payments from FEMA to Grant Recipients					
CISA Total (primary) (+5-ft)	\$122,766,330	\$104,722,168	\$3,783,922	\$86,225,934	\$6,141,806
PA	\$88,690,530	\$75,654,821	\$2,733,633	\$62,292,516	\$4,437,048
IA	\$1,681,740	\$1,434,557	\$51,835	\$1,181,184	\$84,135
HMA	\$32,394,060	\$27,632,790	\$998,454	\$22,752,232	\$1,620,624
FVA Total	\$50,748,250	\$43,289,287	\$1,564,170	\$35,643,448	\$2,538,855
0.2PFA Total	\$35,173,090	\$30,003,358	\$1,084,110	\$24,704,108	\$1,759,654
Benefits					
PA (CISA, primary) (+1-ft)	\$65,817,290	\$56,143,482	\$2,028,630	\$46,227,310	\$3,292,735
Not Quantified	Not Estimated: Damage Avoidance for approximately 12,322 IA and HMA structure projects and 26,985 PA and HMA facility projects over 10 years, Potential Lives Saved, Increased Public Health and Safety, Decreased Cleanup Time, Protection of Critical Facilities, Reduction of Personal and Community Impacts				

* FEMA focused its analysis on the projects impacted in the first 10 years after the rule's publication. FEMA considered the resulting costs, benefits, and transfer payments of the proposed rule on those projects over a 50-year period, for a total of 60 years. The costs and transfers occur in the first 10 years of the 60-year period because that is when the initial investment to elevate or floodproof them to meet the proposed requirements takes place. This is an upfront cost that occurs when the project is constructed. However, the benefits of the proposed rule are realized over the 50-year useful life of the affected structures.

²⁴To obtain the total costs as in Section 7.12, add each individual approach to the FEMA admin cost.

For example, CISA + FEMA admin = total CISA cost.

Table 2: Summary of 60-Year Costs, Transfers, and Benefits by Approach and Program for Affected Projects in Years 1-10 (High Estimate, 2022\$)

Costs ²⁵	Undiscounted	3% Discount Rate		7% Discount Rate	
		Present Value	Annualized	Present Value	Annualized
CISA (primary) (+5-ft)	\$189,853,700	\$161,949,055	\$5,851,699	\$133,345,292	\$9,498,082
PA	\$144,979,878	\$123,670,781	\$4,468,591	\$101,827,801	\$7,253,115
IA	\$1,681,740	\$1,434,557	\$51,835	\$1,181,184	\$84,135
HMA	\$43,192,063	\$36,843,704	\$1,331,272	\$30,336,295	\$2,160,831
FVA	\$74,555,130	\$63,597,039	\$2,297,949	\$52,364,403	\$3,729,876
0.2PFA	\$51,081,940	\$43,573,931	\$1,574,455	\$35,877,816	\$2,555,549
FEMA Admin	\$9,093,061	\$7,843,901	\$283,423	\$6,558,671	\$467,169
Not Quantified	Not Estimated: Increased resilience standard for approximately 26,985 facility projects over 10 years, Additional costs for Adding Requirements to Buildings with Basements, Diversion of Projects Out of the Floodplain, Lifecycle maintenance costs for floodproofing, and Project Delays and Forgone Projects				
Transfer Payments from FEMA to Grant Recipients					
CISA Total (primary) (+5-ft)	\$157,308,700	\$134,187,512	\$4,848,592	\$110,487,049	\$7,869,907
PA	\$123,232,900	\$105,120,163	\$3,798,303	\$86,553,631	\$6,165,148
IA	\$1,681,740	\$1,434,557	\$51,835	\$1,181,184	\$84,135
HMA	\$32,394,060	\$27,632,790	\$998,454	\$22,752,232	\$1,620,624
FVA Total	\$61,609,580	\$52,554,220	\$1,898,939	\$43,271,991	\$3,082,230
0.2PFA Total	\$41,696,300	\$35,567,787	\$1,285,169	\$29,285,736	\$2,086,000
Benefits					
PA (CISA, primary) (+1-ft)	\$77,506,550	\$66,114,661	\$2,388,918	\$54,437,358	\$3,877,531
Not Quantified	Not Estimated: Damage Avoidance for approximately 12,322 IA and HMA structure projects and 26,985 PA and HMA facility projects over 10 years, Potential Lives Saved, Increased Public Health and Safety, Decreased Cleanup Time, Protection of Critical Facilities, Reduction of Personal and Community Impacts				

* FEMA focused its analysis on the projects impacted in the first 10 years after the rule's publication. FEMA considered the resulting costs, benefits, and transfer payments of the proposed rule on those projects over a 50-year period, for a total of 60 years. The costs and transfers occur in the first 10 years of the 60-year period because that is when the initial investment to elevate or floodproof them to meet the proposed requirements takes place. This is an upfront cost that occurs when the project is constructed. However, the benefits of the proposed rule are realized over the 50-year useful life of the affected structures.

Table 3 provides the estimated number of structures and facilities affected by the rule over the first 10 years, assuming that each approach is the only expansion option. Structures, which are walled and roofed buildings, would comply with the FFRMS through

elevating or floodproofing to the required height. Facilities, which are any human-made or human-placed items other than a structure such as roads and bridges, would require different mitigation measures to comply with the increased resilience standard.

The monetized impacts of this rule are representative of the floodproofing and elevation mitigation measures that are required of structures. However, for reasons explained in more detail later, FEMA was unable to monetize the impacts of the rule for facilities.

²⁵To obtain the total costs as in Section 7.12, add each individual approach to the FEMA admin cost.

For example, CISA + FEMA admin = total CISA cost.

Table 3: Estimated Number of Structures and Facilities Affected by the Final Rule in Years 1-10 For Each Approach as if Each Approach Were the Only Expansion Option²⁶

FFRMS Approach	Structures			Total Structures	Facilities		Total Facilities	Total Projects
	PA	IA	HMA		PA	HMA		
FVA	899	1,434	7,755	10,088	26,144	841	26,985	37,073
0.2PFA	688	1,434	7,712	9,834	26,144	841	26,985	36,819
CISA	1,154	1,924	10,398	13,476	26,144	841	26,985	40,461

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Quantified estimates of the benefits of this rule are available for only non-residential PA Category E projects, which are for structures. Due to the project-specific nature of facilities projects and numerous options for making them resilient, FEMA could not estimate the costs of improving flood resilience of facilities.²⁷ Table 2 shows that the total 60-year benefits for non-residential PA Category E projects in the first 10 years is \$54.4 million (7 percent). This benefit is for adding one foot of freeboard, assuming a 59-inch sea level rise (SLR).²⁸ Although the cost for PA Category E projects is \$133.3 million, this cost represents 5 feet of freeboard (FEMA's assumption for CISA).²⁹ FEMA does not have data to quantify the benefits of additional freeboard and thus the quantified benefits represent only a portion of the increased risk reduction that would be achieved through this rule. Ensuring projects are built to the height necessary to avoid additional loss scenarios would provide additional unquantified benefits of avoided damages to the structure, decreased cleanup time and disruption to the community, and increased public health and safety. Moreover, FEMA's use of CISA as its preferred approach

²⁶ These counts are based on the number of closed or obligated projects at the time of analysis. It can take several years for a project to close out or reach the obligation status after the disaster year.

²⁷ Category E projects are public buildings and contents. See Public Assistance Fact Sheet at https://www.fema.gov/sites/default/files/2020-07/fema_public-assistance-fact-sheet_10-2019.pdf.

²⁸ FEMA used one foot for benefits as the 2022 report, "A Benefits Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains," only specifies monetary benefits for an additional one foot over current requirements. FEMA included this number in the quantified benefits because it is the only monetary benefit available for any freeboard level.

A Benefits Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains. FEMA. Draft, July 2022, page 16. Available at: <https://www.regulations.gov/document/FEMA-2023-0026-0003>.

²⁹ Costs for the FVA may be a better comparison because they represent 2 or 3 feet of freeboard, depending on criticality. However, the number of projects using FVA and CISA differ, making such a comparison difficult.

would use the best available and actionable scientific data to tailor future flooding risk to each project ensuring that projects are built only to the height necessary and thus maximizing net benefits. Accordingly, FEMA believes the benefits of the rule—quantified and unquantified—would justify its costs.

II. Background and Legal Authority

The President issued Executive Order 11988 (42 FR 26951, May 25, 1977) as amended by Executive Order 13690, "Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input," (80 FR 6425, Feb. 4, 2015) and Executive Order 14030, "Climate-Related Financial Risk," (86 FR 27967, May 25, 2021) in furtherance of the NFIA (42 U.S.C. 4001 *et seq.*); the Flood Disaster Protection Act of 1973, as amended (Pub. L. 93–234, 87 Stat. 975); and the NEPA (42 U.S.C. 4321 *et seq.*). Each agency is responsible for implementing Executive Order 11988, as amended, as allowed by and consistent with applicable law within their existing statutory authorities.³⁰

Section II.A below describes Executive Order 11988, the 1978 Guidelines, and the statutory authority underlying the Executive Order. Executive Order 11988, along with the 1978 Guidelines, established an 8-step decision-making process by which Federal agencies carry out Executive Order 11988's direction to avoid the long- and short-term adverse impacts associated with the occupancy and modification of the floodplain, and avoid the direct or indirect support of floodplain development whenever there is a practicable alternative.

Next, Section II.B describes FEMA's statutory authority to require its grant recipients to carry out repairs or construction in accordance with specific standards. Section II.C describes FEMA's implementing regulations at 44 CFR part 9, which closely follow the

model decision-making process under Executive Order 11988. Section II.D describes the development of Executive Order 13690, the FFRMS, and additional guidance in the Revised Guidelines issued in 2015, as well as subsequent amendments to Executive Order 11988. Section II.E describes the substantive components of the FFRMS. Section II.F. describes FEMA's NPRM and supplementary policy implementing the FFRMS.

A. Executive Order 11988, "Floodplain Management"

The President issued Executive Order 11988 (42 FR 26951, May 25, 1977) in furtherance of the NFIA (42 U.S.C. 4001 *et seq.*); the Flood Disaster Protection Act of 1973, as amended (Pub. L. 93–234, 87 Stat. 975); and the NEPA (42 U.S.C. 4321 *et seq.*). The NFIA, as amended by the Flood Disaster Protection Act establishes a multi-purpose program to provide flood insurance, minimize exposure of property to flood losses, minimize the damage caused by flood losses, and guide the development of proposed construction, where practicable, away from floodplains.³¹ The NFIA and the Flood Disaster Protection Act highlight coordination of flood insurance with land management programs in flood-prone areas. NEPA requires Federal agencies to analyze the reasonably foreseeable environmental effects of proposed major Federal actions and evaluate a reasonable range of alternatives to those actions, which includes the evaluation of the impacts of proposed actions in floodplains.³² NEPA mandates that agencies "attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences."³³

In furtherance of and consistent with this statutory foundation, Executive Order 11988 directs Federal agencies to avoid, to the extent possible, the long-

³¹ See 42 U.S.C. 4001 and 4102.

³² See 42 U.S.C. 4332(2)(C).

³³ See 42 U.S.C. 4331(b)(3).

³⁰ See 42 FR 26951, May 25, 1977 at Section 2(d); see also 80 FR 6425, Feb. 4, 2015 at Section 5(b).

and short-term adverse impacts associated with the occupancy and modification of floodplains, where there is a practicable alternative. The Executive Order directs each Federal agency to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for: (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning, programs, and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of the Executive Order.

To meet this direction, each agency, before taking an action, must determine whether the proposed action will occur in a floodplain.³⁴ Section (6)(c) of Executive Order 11988 defined the word “floodplain” to mean “the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, the area subject to a one percent or greater chance of flooding in any given year.”³⁵ If the action will occur in a floodplain, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the agency finds that the only practicable alternative requires the action to occur in the floodplain, the agency must, prior to taking the action, design or modify the action to minimize potential harm to or within the floodplain. Additionally, the agency must prepare and circulate a notice explaining why the proposed action is located in the floodplain. Particularly relevant to FEMA, the Executive Order also requires agencies

³⁴ Any action FEMA takes in a floodplain, including its provision of grants for disaster assistance, undergoes an analysis pursuant to FEMA’s implementation of Executive Order 11988 (unless the action is specifically exempted from the requirements of the Order and the implementing regulations). The grant recipient, therefore, generally provides information to FEMA about the practicability of alternatives outside the floodplain and other information to assist in the analysis.

³⁵ This is also referred to as the “100-year floodplain” or the “base floodplain.”

to provide appropriate grant funding guidance to applicants to encourage them to evaluate the effects of their proposals in floodplains, prior to submitting grant applications.

Executive Order 11988 directs agencies to prepare implementing procedures in consultation with the Water Resources Council (WRC),³⁶ FEMA, and the Council on Environmental Quality (CEQ). As noted, the WRC issued the 1978 Guidelines, the authoritative interpretation of Executive Order 11988.³⁷ The 1978 Guidelines provided a section-by-section analysis, defined key terms, and outlined an 8-step decision-making process for carrying out the directives of Executive Order 11988.

B. Statutory Authority To Require FFRMS Under FEMA Grant Programs

FEMA has authority to require application of the FFRMS as a condition of funding in its grant programs based on the grant programs’ authorizing statutes. Congress granted FEMA the authority to provide Federal assistance through multiple grant programs under the Stafford Act,³⁸ the NFIA,³⁹ the Homeland Security Act of 2002,⁴⁰ the

³⁶ The WRC, established by statute (42 U.S.C. 1962a–1), is charged with maintaining a continuing study and preparing an assessment biennially, or at such less frequent intervals as the Council may determine, of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein; and maintaining a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies. It is responsible for appraising the adequacy of existing and proposed policies and programs to meet such requirements and making recommendations to the President with respect to Federal policies and programs.

³⁷ 42 FR 6030, Feb. 10, 1978. A PDF copy of the 1978 Guidelines can be found at this link: [hud.gov/sites/documents/DOC_14216.PDF](https://www.federalregister.gov/documents/1978/02/10/42-fr-6030) (last accessed Jan. 24, 2024).

³⁸ 42 U.S.C. 5121 *et seq.*

³⁹ 42 U.S.C. 4001 *et seq.*

⁴⁰ 6 U.S.C. 101 *et seq.*; *see also* 6 U.S.C. 314(a)(12), which specifically charges the Administrator with supervising various grant programs authorized under the HSA. Such grant programs have long been governed by floodplain management regulations at 44 CFR part 9, *see, e.g.*, 44 FR 76510 (Dec. 27, 1979), 45 FR 59520 (Sept. 9, 1980). *See also, e.g.*, 2 CFR 200.300(a) (directing Federal awarding agencies to manage and administer Federal awards in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements including, but not limited to, those protecting public welfare and the environment; and requiring the Federal awarding agency to communicate to the non-Federal entity all relevant public policy requirements, and incorporate them either directly or by reference in the terms and conditions of the Federal award.).

Federal Fire Prevention and Control Act of 1974,⁴¹ the Earthquake Hazards Reduction Act of 1977,⁴² and various other appropriations acts. Under each of these authorities, FEMA may set grant eligibility criteria consistent with the respective purposes of such programs and FEMA’s mission, including to protect Federal investments from the risks of further damage.⁴³

Congress enacted the Stafford Act⁴⁴ to “provide an orderly and continuing means of assistance” to State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from disasters by, among other responsibilities, “encouraging hazard mitigation measures to reduce losses from disasters, including the development of land use and construction regulations” and “identifying the climate and natural hazard resilience of vulnerable communities.”⁴⁵ FEMA has general authority under the Stafford Act to “prescribe such rules and regulations as may be necessary and proper to carry out the provisions of [the Stafford Act], and may exercise, either directly or through such Federal agency as the President may designate, any power or authority conferred to the President by [the Stafford Act].”⁴⁶ The Stafford Act further grants FEMA explicit authority to set the minimum standards for safe land use and construction standards required in the repair or construction of private and public facilities.⁴⁷

Congress enacted the NFIA to authorize a flood insurance program which is designed to “promote the public interest by providing appropriate protection against the perils of flood losses and encouraging sound land use by minimizing exposure of property to

⁴¹ 15 U.S.C. 2229 and 2229a.

⁴² 42 U.S.C. 7701 *et seq.*

⁴³ *See, e.g.*, 6 U.S.C. 609 (granting FEMA approval authority over grant funds for construction awards under its Homeland Security Grant Program, State Homeland Security Grant Program, Urban Area Security Initiative, Operation Stonegarden, Tribal Homeland Security Grant Program, and Nonprofit Security Grant Program); 6 U.S.C. 1182(d)(1) (granting DHS the authority to determine the grant requirements for the Intercity Bus Security Grant Program); 6 U.S.C. 1163(c)(1) (granting FEMA the authority to determine the grant requirements for the Intercity Passenger Rail grant program); 46 U.S.C. 70101 (granting DHS approval authority over grant funds for construction awards under the Port Security Grant Program); 6 U.S.C. 1135(c)(1) (granting DHS the authority to determine the grant requirements for the Transit Security Grant Program); 33 U.S.C. 467f-2(c)(2)(A) (granting FEMA the authority to set the minimum eligibility requirements for the Rehabilitation of High Hazard Dam Program).

⁴⁴ 42 U.S.C. 5121 *et seq.*

⁴⁵ 42 U.S.C. 5121(b)(5) and (7).

⁴⁶ 42 U.S.C. 5164.

⁴⁷ 42 U.S.C. 5165a(a)(1)–(2).

flood losses” and the objectives of which should be “integrally related to a unified national program for flood plain management.”⁴⁸ FEMA has general authority under the NFIA to “issue such regulations as may be necessary” to carry out its provisions.⁴⁹ Section 404 of the NFIA grants FEMA the authority to provide flood mitigation grant funding and requires the activities funded to be consistent with floodplain management criteria developed by the Administrator.⁵⁰

C. 44 CFR Part 9, “Floodplain Management and Protection of Wetlands”

Consistent with the NFIA, the Flood Disaster Protection Act, and NEPA, FEMA promulgated regulations implementing Executive Order 11988 at 44 CFR part 9, “Floodplain Management and Protection of Wetlands.”⁵¹ Part 9 closely follows the 1978 Guidelines in setting forth FEMA’s policy and procedures for floodplain management relating to disaster planning, response and recovery, and hazard mitigation. Part 9 generally applies to FEMA actions, including FEMA direct actions and FEMA’s disaster and non-disaster

⁴⁸ 42 U.S.C. 4001(c). As part of the floodplain management program under the NFIP, FEMA establishes minimum floodplain management criteria, and communities that participate in the NFIP must adopt and enforce floodplain management regulations that incorporate the minimum criteria. 44 CFR 59.2(b), 59.22(a)(3), 60.1(d). FEMA has determined that it is consistent with the purposes of the NFIA to allow communities to adopt more comprehensive floodplain management regulations that exceed the minimum requirements. 44 CFR 60.1(d). Similarly, in its implementation of Executive Order 11988, FEMA prohibits taking any action taken unless it is consistent with the NFIP minimum criteria or any more restrictive Federal, State or local floodplain management standards. 44 CFR 9.11(d)(6).

⁴⁹ 42 U.S.C. 4128(a).

⁵⁰ 42 U.S.C. 4104c and 4102. Please note this rulemaking does not alter the minimum floodplain management criteria that communities adopt to participate in the NFIP. The NFIP is a program through which property owners in participating communities can purchase Federal flood insurance as a protection against flood losses. 42 U.S.C. 4011(a). As a condition of eligibility, a community must adopt and enforce floodplain management regulations that incorporate NFIP minimum floodplain management criteria developed by the Administrator. 42 U.S.C. 4011(a) and (b); 42 U.S.C. 4102; 44 CFR 59.2(b), 59.22(a)(3), 60.1(d). Further information regarding FEMA’s minimum floodplain management standards for the NFIP can be found at 44 CFR part 59 *et seq.* Because this rule only applies to actions subject to the FFRMS, this rule does not change any FEMA standards applicable to community or individual participation in any aspect of the NFIP. In general, changes to 44 CFR part 59 *et seq.* would require a rulemaking to revise the appropriate sections of the CFR.

⁵¹ FEMA published an interim final rule on December 27, 1979 (44 FR 76510) and a final rule on September 9, 1980 (45 FR 59520). Note this part also implements a related Executive Order 11990, “Protection of Wetlands.” See 42 FR 26961, May 25, 1977.

assistance programs.⁵² Pursuant to section 8 of Executive Order 11988, part 9 does not apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to sections 403 and 502 of the Stafford Act, as amended (42 U.S.C. 5170b and 5192). In addition, FEMA applies part 9 programmatically to the National Flood Insurance Program (NFIP).⁵³ FEMA does not apply part 9 to site-specific actions under the NFIP because the establishment of programmatic criteria, rather than the application of the programmatic criteria to individual situations, is the action with the potential to influence or affect floodplains.⁵⁴

Part 9 outlines FEMA’s 8-step decision-making process for conducting floodplain management reviews before performing certain actions, including approval of grant funding. The 8-step decision making process is:

- (1) Determine whether the proposed action is located in a wetland or floodplain and its potential to affect or be affected by a wetland or floodplain;
- (2) Notify the public of the intent to carry out the proposed action within or affecting a wetland or floodplain, and involve the affected and interested public in the decision-making process;
- (3) Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland, including alternative sites, actions, and the “no action” option;
- (4) Identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action;
- (5) Minimize the proposed action’s potential adverse impacts and support to or within the floodplains and wetlands identified under Step 4;
- (6) Re-evaluate the proposed action and other practicable alternatives identified in step 3 based on new information gained in steps 4 and 5;

⁵² 44 CFR 9.4 defines the actions subject to the requirements, which include federal lands and facilities, providing federal funds for construction and improvements, and conducting activities or programs that affect land use.

⁵³ A complete list of FEMA programs to which Part 9 does not apply appears at 44 CFR 9.5. The exemption for actions under the NFIP is located at 44 CFR 9.5(f).

⁵⁴ For example, Part 9 requires FEMA to apply the 8-step process to a programmatic determination of categories of structures to be insured but does not require FEMA to apply an 8-step review to a determination of whether to insure each individual structure. See 44 CFR 9.5(g).

- (7) Inform the public of any final decision that the floodplain or wetland is the only practicable alternative; and
- (8) Implement the action.

There are certain exclusions from all or some of the 8-steps for certain categories of actions being funded by FEMA.⁵⁵

D. Executive Order 13690, the Federal Flood Risk Management Standard and Subsequent Amendments to Executive Order 11988, and Revisions to the 1978 Guidelines

On January 30, 2015, the President issued Executive Order 13690, “Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input.”⁵⁶ Executive Order 13690 amended Executive Order 11988 and established the FFRMS. It required FEMA to publish an updated version of the 1978 Guidelines (revised to incorporate the changes required by Executive Order 13690 and the FFRMS) in the **Federal Register** for notice and comment. Executive Order 13690 also required the WRC to issue final Guidelines to provide guidance to agencies on the implementation of executive Order 11988, as amended, consistent with the FFRMS. FEMA, acting on behalf of the Mitigation Framework Leadership Group (MitFLG), published a **Federal Register** notice for a 60-day notice and comment period seeking comments on a draft of the Revised Guidelines on February 5, 2015.⁵⁷ FEMA received over 556 separate submissions.⁵⁸ The final Revised Guidelines were issued on October 8, 2015.⁵⁹

The Revised Guidelines contain an updated version of the FFRMS (located at Appendix G of the Revised Guidelines), reiterate key concepts from the 1978 Guidelines, and explain the new concepts resulting from the

⁵⁵ 44 CFR 9.5(c), (d), (e), and (g).

⁵⁶ 80 FR 6425, Feb. 4, 2015. Section 5(c) of Executive Order 13690 specifically states that the order “is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.”

⁵⁷ 80 FR 6530, Feb. 5, 2015.

⁵⁸ FEMA received approximately 556 separate submissions, which raised over 2700 separate issues and positions. Written comments were received at a series of eight in-person listening sessions across the country (135 submissions); verbal comments were shared during the public comment periods of these same listening sessions (74 commenters); comments were submitted through the FFRMS email address (20 submissions); comments were submitted through *regulations.gov* (326 submissions); and comments were submitted as part of a petition of support (1 submission).

⁵⁹ 80 FR 64008, Oct. 22, 2015.

FFRMS. In response to public comments, the MitFLG clarified the distinction between “actions” and “Federally funded projects.” On August 22, 2016, FEMA published an NPRM entitled “Updates to Floodplain Management and Protection of Wetlands Regulations To Implement Executive Order 13690 and the Federal Flood Risk Management Standard” in the **Federal Register** (81 FR 57402). The rulemaking would have revised FEMA’s regulations on “Floodplain Management and Protection of Wetlands” to implement Executive Order 13690. FEMA also proposed a supplementary policy entitled “FEMA Policy: Guidance for Implementing the Federal Flood Risk Management Standard (FFRMS)” (FEMA Policy 078–3), which would have further clarified how FEMA would apply the FFRMS. The notice of availability and request for comments for the supplementary policy also published in the August 22, 2016, **Federal Register** at 81 FR 56558. On September 20, 2016, FEMA published a notice of data availability regarding a draft report, the 2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas, which had been added to the docket for the proposed rule (81 FR 64403).

On August 15, 2017, the President issued Executive Order 13807 (“Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”) which revoked Executive Order 13690. See 82 FR 40463, Aug. 24, 2017. Accordingly, on March 6, 2018, in light of the revocation of Executive Order 13690, FEMA withdrew the August 22, 2016, NPRM and supplementary policy (83 FR 9473). On May 20, 2021, the President issued Executive Order 14030 (“Climate-Related Financial Risk”) ⁶⁰ reinstating Executive Order 13690, thereby reestablishing the FFRMS. Executive Order 14030 also states the Revised Guidelines issued in 2015 were never revoked and remain in effect. As such, FEMA reviewed its prior NPRM and proposed policy, and revised its approach to implementation based on lessons learned during and since the 2016 rulemaking process. Specifically, FEMA first partially implemented the FFRMS by policy with respect to covered projects in existing floodplains in its Public Assistance and Hazard

Mitigation Assistance programs.⁶¹ FEMA next proposed to fully implement the FFRMS through the NPRM, which proposed updates to FEMA regulations and a supplemental FFRMS policy.⁶²

E. Substantive Components of the FFRMS

The FFRMS is a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains and wetlands.⁶³ Incorporating the FFRMS will expand the floodplain and require projects to increase their resilience to flooding. Applying the FFRMS will help ensure that Federally funded projects will last as long as intended. In addition, the FFRMS and Revised Guidelines require the evaluation of natural features and nature-based approaches, where possible, in the analysis of practicable alternatives of the decision-making process for all Federal actions. Nature-based approaches can also help minimize an action’s impacts to the floodplain and assist in restoring the natural and beneficial functions of floodplains.

Under the FFRMS, a Federal agency may establish the floodplain for actions subject to the FFRMS using any of the following approaches:

- *Approach 1: Climate-Informed Science Approach (CISA):* Utilizing the best-available, actionable hydrologic and hydraulic data and methods that

⁶¹ See FEMA Policy 104–22–003, “Partial Implementation of the Federal Flood Risk Management Standard for Public Assistance (Interim),” June 3, 2022 found at <https://www.fema.gov/sites/default/files/documents/fema-fp-104-22-003-partial-implementation-ffrms-pa-interim.pdf> (last accessed Jan. 24, 2024) and FEMA Policy 206–21–003–0001, “Partial Implementation of the Federal Flood Risk Management Standard for Hazard Mitigation Assistance Program,” Dec. 7, 2022 found at https://www.fema.gov/sites/default/files/documents/fema_policy-fp-206-21-003-0001-implementation-ffrms-hma-program_122022.pdf (last accessed Jan. 24, 2024).

⁶² 88 FR 67870, Oct. 2, 2023.

⁶³ Although the FFRMS describes various approaches for determining the higher vertical flood elevation and corresponding horizontal floodplain for Federally funded projects, it is not meant to be an “elevation” standard. The FFRMS is a resilience standard. The vertical flood elevation and corresponding horizontal floodplain determined using the approaches in the FFRMS establish the level to which a structure or facility must be resilient to. This may include using structural or non-structural methods to reduce or prevent damage; elevating a structure; or, where appropriate, designing it to adapt to, withstand, and rapidly recover from a flood event. See “Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, “Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input” (Oct. 8, 2015), found at https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf (last accessed Jan. 24, 2024).

integrate current and future changes in flooding based on climate science;

- *Approach 2: Freeboard Value Approach (FVA):* Freeboard (1 percent annual chance flood elevation + X, where X is 3 feet for critical actions and 2 feet for other actions);

- *Approach 3: 0.2-percent-annual-chance Flood Approach (0.2PFA):* 0.2 percent annual chance flood (also known as the 500-year flood); or

- *Approach 4:* the elevation and flood hazard area that result from using any other method identified in an update to the FFRMS.⁶⁴

The four approaches are described in further detail below.

FFRMS Approach 1: CISA

The Revised Guidelines state that the CISA is the preferred approach, and that Federal agencies should use this approach when data to support such an analysis are available and actionable. The CISA uses existing, sound science and engineering methods (*e.g.*, hydrologic and hydraulic analysis and methods used to establish current flood elevations and floodplain maps), supplemented with best available and actionable climate science and consideration of impacts from projected land cover/land use changes, long-term erosion, and other processes that may alter flood hazards over the lifecycle of the Federal investment.⁶⁵ For areas vulnerable to coastal flood hazards, the CISA includes consideration of the regional sea-level rise variability during the lifecycle of the Federal action. This includes use of global mean sea-level-rise scenarios adjusted to the local relative sea-level conditions and would be combined with surge, tide, and wave data using state-of-the-art science in a manner appropriate to policies, practices, criticality, and consequences. For areas vulnerable to riverine flood hazards (*i.e.*, flood hazards stemming from a river source), the CISA would account for changes in riverine conditions due to current and future changes in climate and other factors such as land use, by applying state-of-the-art science in a manner appropriate to policies, practices, criticality, and consequences (risk). The CISA for critical actions would utilize the same methodology as used for non-critical actions that are subject to Executive Order 11988, as amended, but with an emphasis on criticality as one of the factors for agencies to consider when conducting the analysis.

⁶⁴ See Executive Order 13690 Section 2(i), 80 FR 6425, 6426 (Feb. 4, 2015).

⁶⁵ See Revised Guidelines, pgs. 36–37.

⁶⁰ 86 FR 27967, May 25, 2021. See also Executive Order 13990 (“Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis”), 86 FR 7037, Jan. 25, 2021 (revoking Executive Order 13807).

FFRMS Approach 2: FVA

The FFRMS and Revised Guidelines define freeboard values as an additional 2 feet added to the 1 percent annual chance flood elevation, or, for critical actions, an additional 3 feet added to the 1 percent annual chance flood elevation. In other words, the floodplain established by the FVA is the equivalent of the 1 percent annual chance floodplain, plus either 2 or 3 feet of vertical elevation, as applicable based on criticality, and a corresponding increase in the horizontal extent of the floodplain. The increased horizontal extent will not be the same in every case. When the same vertical increase is applied in multiple actions subject to the FFRMS in different areas, the amount of the increase in the horizontal extent of the respective floodplains will depend upon the topography of the area surrounding the proposed location of the action.

FFRMS Approach 3: 0.2PFA

Agencies may use available 0.2 percent annual chance (or “500-year”) flood data as the basis of the FFRMS elevation and corresponding floodplain extent. Under this approach, the same floodplain and elevation is used for critical and non-critical actions. The FFRMS and Revised Guidelines note that often the 0.2 percent annual chance flood elevation data provided by FEMA in coastal areas only considers storm-surge hazards; this data does not include local wave action or storm-induced erosion that are considered in the computation of flood elevations. The FFRMS and Revised Guidelines encourage agencies to obtain or develop the necessary data, including wave heights, to ensure that any 0.2 percent annual chance flood data applied will achieve an appropriate level of flood resilience or use the FVA approach instead for the proposed investment.

FFRMS Approach 4: Update to FFRMS

The MitFLG, in consultation with the Federal Interagency Floodplain Management Task Force (FIFM-TF), must reassess the FFRMS annually after seeking stakeholder input and provide recommendations to the WRC to update the FFRMS, if warranted. The WRC must issue an update to the FFRMS at least every 5 years. The updates ensure the floodplain determination process for actions subject to the FFRMS reflects current methodologies.

Further Guidance on Application of the FFRMS Approaches to Establishing the Floodplain

The FFRMS and Revised Guidelines state that when an agency does not use

the CISA in a coastal flood hazard area and where the FEMA 0.2 percent annual chance flood elevation does not include wave height, or a wave height has not been determined, the 0.2 percent annual chance elevation should not be used, and the FVA should be used instead. The FFRMS and Revised Guidelines note that where the 0.2 percent annual chance flood elevation does not consider wave action, the result will likely either be lower than the current base flood elevation or the base flood elevation plus applicable freeboard. Where wave action has been incorporated into the 0.2 percent annual chance elevation, the 0.2 percent annual chance elevation can be used.

The Revised Guidelines state that for riverine flood hazard areas, agencies may select either the FVA or 0.2PFA (or a combination of approaches, as appropriate) when actionable science is not available, and an agency opts not to follow the CISA. The agency is not required to use the higher of the elevations but may opt to do so. The elevation standards of the FFRMS are not intended to supplant applicable State, Tribal, territorial, or local floodplain protection standards. If such standards exceed the FFRMS, an agency should apply those standards if the agency determines the application of the standards is reasonable considering the goals of Executive Order 11988, as amended.⁶⁶

F. Summary of the 2023 Proposed Rule and Proposed FFRMS Policy

The proposed rule set forth how FEMA would implement Executive Order 11988, as amended, the FFRMS, and the Revised Guidelines as part of FEMA’s floodplain management regulations, while also updating FEMA’s 8-step process. The proposed rule included the following provisions,

⁶⁶ See Revised Guidelines at 53. The Revised Guidelines suggest agencies should apply a reasonableness standard to higher SLTT floodplain management standards. FEMA has historically deferred to higher local codes and standards from an SLTT government in 44 CFR 9.11(d)(6) and will continue the practice through this rulemaking, rather than applying a case-by-case reasonableness analysis and believes this is appropriate because of program-specific controls that ensure higher standards are reasonable. Specifically, in the PA program, if an SLTT government has adopted a code or standard that exceeds minimum standards set by FEMA, regulations at 44 CFR 206.226(d) require the code to be in place and adopted pre-disaster which guards against an SLTT government’s adoption of unreasonably high codes and standards. With respect to mitigation projects, they are all required to be cost-effective as a minimum criteria of eligibility. See 42 U.S.C. 5170c(a); 42 U.S.C. 5133(b); 42 U.S.C. 4104c(c)(2)(A). This project-by-project cost-effectiveness analysis should guard against any SLTT standards that are unreasonably high.

which remain unchanged in this final rule except as indicated in section I.C of this preamble.

Severability

The NPRM proposed to amend § 9.3 to remove the authorities section as redundant and to replace it with a severability section. FEMA did not receive any comments on its proposal to include a severability provision. The proposed severability provision is therefore incorporated in § 9.3 of this final rule without change. FEMA believes that its authority to require an 8-step decision making process and incorporate the FFRMS into it is well-supported in law and policy and should be upheld in any legal challenge. However, in the event that any portion of the proposed rule is declared invalid, FEMA intends that the various provisions of 44 CFR part 9 be severable. The provisions are not so interconnected that the rule’s efficacy depends on every one of them remaining in place—implementation of the different provisions is sufficiently distinct that FEMA’s aim of updating the 8-step process and incorporating the FFRMS would still be furthered by maintaining the other provisions. For example, if a court were to find unlawful FEMA’s inclusion of the FFRMS approaches in § 9.7(c), FEMA intends to retain the inclusion of consideration of nature-based approaches in the appropriate steps of the 8-step decision making process and all other amendments to the 44 CFR part 9 not affected by the court decision. Similarly, if a court were to find unlawful FEMA’s chosen approach in the proposed policy, FEMA intends to retain the regulatory changes implementing the FFRMS. Those provisions that are unaffected by a legal ruling can be implemented by an agency without requiring a new round of rulemaking simply to promulgate provisions that are not subject to a court ruling.

Conforming Changes to Definitions

The NPRM proposed to amend § 9.4 to reflect the new definitions required by the FFRMS and Revised Guidelines, while also updating other definitions to clarify terms and leverage common usage that has evolved since the regulation was issued. The most significant definitional change proposed by the FFRMS was the change to the meaning of “floodplain.” To harmonize this change in § 9.4, the NPRM proposed to revise a few existing definitions and removed other definitions. In addition, the NPRM proposed to revise the remaining sections of 44 CFR part 9 that

refer generally to the floodplain or refer specifically to the base (or 100-year) floodplain or the 0.2 percent annual chance (or 500-year) floodplain, for clarity.

Distinction Between “Actions Subject to the FFRMS” and Other FEMA Actions

Step 1 in the 8-step process is to determine whether the proposed action is in the floodplain. Because Executive Order 11988, as amended, and the FFRMS revised the definition of the “floodplain” that agencies use for “Federally funded projects,” the NPRM proposed to revise the first step to require FEMA to determine whether the proposed action falls within the definition of an “action subject to the FFRMS.” Under the proposed rule, if FEMA determined that the action is a Federally funded project, *i.e.*, if FEMA determined that the action uses FEMA funds for new construction, substantial improvement, or to address substantial damage to a structure or facility, the FFRMS floodplain would apply. Alternatively, if FEMA determined that the action did not fall under the definition of an action subject to the FFRMS, the existing floodplain analysis would remain in place. For example, if the action was considered non-critical, the 1 percent annual chance floodplain applied, and if the action was considered critical, the 0.2 percent annual chance floodplain applied.

Emphasis on Nature-Based Approaches

Executive Order 11988, as amended, directs agencies to use, where possible, natural systems, ecosystem processes, and nature-based approaches in the development of alternatives for Federal actions in the floodplain. The NPRM proposed to incorporate this requirement in § 9.9, which addresses the requirement to consider practicable alternatives when determining whether to locate an action in the floodplain. This proposed requirement would apply regardless of whether the proposed action is a FEMA Federally funded project. To further explain this proposed requirement, the NPRM proposed to add a definition of “nature-based approaches,” meaning features designed to mimic natural processes and provide specific services such as reducing flood risk and/or improving water quality. The NPRM also proposed to add a definition of “natural features,” meaning the characteristics of a particular environment that are created by physical, geological, biological, and chemical processes and exist in dynamic equilibrium.

Consistent with the Revised Guidelines, FEMA proposed to update

the factors integrated into its impact analysis and minimization measures (Step 4 and Step 5) to identify those opportunities for beneficial floodplain and wetland values, to include natural values related factors that prioritize water resource values, living resource values, and agricultural, aquacultural, and forestry resource values. Applying natural features or nature-based approaches as alternatives furthers the goals in 44 CFR part 9 and allows for FEMA to further encourage those actions that increase the natural and beneficial functions of the floodplain.

The NPRM proposed to update Step 1 of the 8-step process to describe the floodplain determination for those actions that are subject to the FFRMS, and Step 3 to require the consideration of natural features and nature-based approaches in the identification and evaluation of practicable alternatives. The NPRM also proposed to incorporate certain additional exclusions from all or some of the 8-steps for certain categories of actions being funded by FEMA. Specifically, FEMA proposed to remove private bridges and debris clearance and removal under section 502 of the Stafford Act from the 8-step process, while also updating the monetary thresholds for actions under sections 406 and 407 of the Stafford Act.

Proposed FFRMS Policy

The proposed FFRMS policy outlined the FFRMS approach FEMA would use for actions subject to the FFRMS. FEMA’s proposed FFRMS policy would be applicable to actions in the FFRMS floodplain where FEMA funds were used for new construction, substantial improvement, or to address substantial damage. Specifically, the proposed policy would require FEMA to determine the FFRMS floodplain according to the Climate-Informed Science Approach (CISA) for all locations where the best-available, actionable hydrologic and hydraulic data methods that integrate current and future changes in flooding based on climate science exist. When the CISA data was not available and not actionable for a critical action, the proposed FFRMS policy would require FEMA to determine the FFRMS floodplain as the area that would be inundated by the higher of either the 0.2 percent annual chance flood or the 3 feet of freeboard above the base flood elevation (BFE) for that location (the Freeboard Value Approach or FVA). When the CISA is not available and actionable for a non-critical action, the proposed FFRMS policy would require FEMA to determine the FFRMS floodplain as the area that would be

inundated by the lower of either the 0.2 percent annual chance flood or the 2 feet of freeboard above the BFE for that location (the FVA). In coastal areas where the CISA data is not available and actionable, the proposed FFRMS policy would require the FVA be used if the available 0.2 percent annual chance flood elevation does not account for wave action.

FEMA noted in the policy and the NPRM that it was coordinating across the Federal government to develop tools, such as the FFRMS Job Aid published in the public docket associated with this rulemaking,⁶⁷ to assist agencies and stakeholders in determining the FFRMS floodplain and would rely on those tools as the best available information in making its determinations. The FFRMS Job Aid presents a general methodology to identify the FFRMS floodplain for each of the three approaches that relies on information from available FEMA FIRMs, U.S. Geological Survey (USGS) ground elevations, and the 2022 Sea Level Rise Technical Report sea level rise estimates.⁶⁸

FEMA’s proposed FFRMS policy also required that nature-based solutions and natural features be considered and implemented where possible to all actions that are subject to Step 3 of the 8-step decision-making process and not just those actions subject to the FFRMS. Nature-based solutions and natural features must be considered as an alternative action in Step 3. Where it is not possible to use natural features and nature-based solutions as an alternative on their own, they would be considered in conjunction with the proposed action as a minimization measure in Step 5.

Updated FFRMS Resources

The FFRMS approaches include the CISA, an “approach that uses the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science.” The Revised Guidelines and Appendix H help to define the “best available and actionable science,” stating that best-available generally refers to science, data or information that is:

⁶⁷ See NPRM, 88 FR 67870, 67900 and FEMA Proposed Policy: Federal Flood Risk Management Standard at pg. 5 (posted to the public docket at <https://www.regulations.gov/document/FEMA-2023-0026-0005>). See also https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024) and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

⁶⁸ *Id.* at Section 1.6.

- transparent—clearly outlines assumptions, applications, and limitations;
- technically credible—transparent subject matter or more formal external peer review, as appropriate, of processes and source data;
- usable—relevance and accessibility of the information to its intended users; and
- legitimate—perceived by stakeholders to conform to recognized principles, rules, or standards.

Legitimacy might be achieved by existing government planning processes with the opportunity for public comment and engagement.⁶⁹

Actionable science includes theories, data, analyses, models, projections, scenarios and tools that are:

- relevant to the decision under consideration;
- reliable in terms of its scientific or engineering basis and appropriate level of peer review;
- understandable to those making the decision;
- supportive of decisions across wide spatial, temporal, and organizational ranges, including those of time-sensitive operational and capital investment decision-making;
- co-produced by scientists, practitioners, and decisionmakers, and meet the needs of and are readily accessible by stakeholders.⁷⁰

Appendix H further defines a general framework for the CISA by identifying types of changes that should be considered and discussing the importance of considering operational life; provides an approach for incorporating uncertainty into the CISA; and discusses a range of data sources. The document does not prescribe or direct agencies to use specific resources or methods.

In 2023, the Science Subgroup convened by the Flood Resilience Interagency Working Group of the National Climate Task Force published the FFRMS CISA State of the Science Report (“FFRMS CISA State of the Science Report”).⁷¹ This report provides a review and update of the best-available, actionable science that can support application of the CISA, reflecting science and technology advancements made since 2015. Like

⁶⁹ See Revised Guidelines, Appendix H: Climate-Informed Science Approach and Resources, pg.5

⁷⁰ See Revised Guidelines, pg. 51 and Appendix H: Climate-Informed Science Approach and Resources, pg. 5.

⁷¹ Available at https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed Mar. 12, 2024).

Appendix H from the Revised Guidelines, the FFRMS CISA State of the Science Report provides non-prescriptive, scientific, and engineering guidance for use by Federal agencies, their non-Federal partners, and other entities in determining future flood hazards under the FFRMS’ CISA option. The FFRMS CISA State of the Science Report refines the initial framework from Appendix H to define two specific workflows for applying the CISA,⁷² while acknowledging that technical competencies and capabilities needed to fully apply the CISA vary and may exceed those available in most Federal agencies and many non-Federal users.⁷³ The Report states that workflow implementation can be scaled to meet resource level and project requirements.⁷⁴

The FFRMS CISA State of the Science Report specifically identifies the latest sea level rise projections from the National Climate Assessment as actionable.⁷⁵ The FFRMS State of the Science Report states each agency should factor projected regional/local sea level change into Federal investment decisions located as far inland as the extent of estimated tidal influence, now and in the future, using the most appropriate methods for the scale and consequence of the decision.⁷⁶ The FFRMS CISA State of the Science Report also suggests that along low-lying coastal shorelines on the Atlantic and Gulf Coasts not subject to runup or overtopping, the appropriate sea level rise estimates can be used similar to freeboard.⁷⁷

⁷² FFRMS CISA State of the Science Report, Coastal workflow starting on pg. 11 and Riverine workflow starting on pg. 38.

⁷³ *Id.* at pg. 5.

⁷⁴ *See id.*

⁷⁵ *Id.* at pgs. 21–22.

⁷⁶ *Id.* at pg. 23.

⁷⁷ The FFRMS CISA State of the Science Report identifies the latest interagency Federal guidance for regionally-based SLR projections as available and actionable by recommending that all agencies should use these data as part of a CISA approach. At pg. 22, the Report states “Federal agencies should apply this latest interagency Federal guidance for regionally-based SLR projections. Scenarios and time horizons should use a consistent national approach based on risk tolerance and criticality.” However, the Report also warns against using the simplified approach with SLR in areas subject to runup and overtopping on pg. 28 “Notably, areas subject to runup and overtopping can be very sensitive to changes in water level (including due to SLR) and the variability of the slope—so within a CISA implementation, these areas should be treated with appropriate analysis and not simple linear addition of flooding components.” Based on these guidelines, the FFRMS Job Aid establishes the use of simplified CISA in specific areas, namely in some coastal environments, specifically along low-lying coastal shorelines on the Atlantic and Gulf Coasts. See FFRMS Job Aid, pg. 10.

This is the basis of the interagency implementation and supporting tools such as the FFRMS Job Aid.⁷⁸ The FFRMS Job Aid is a resource to help Federal agencies and their non-Federal partners (including potential Federal financial aid recipients) conduct a screening to determine if a proposed Federally funded action will be located in an FFRMS floodplain, based on the CISA, FVA, or 0.2PFA. While Appendix H of the Revised Guidelines and the FFRMS CISA State of the Science Report provide more general approaches that could be used to apply the CISA with sufficient time, money and expertise,⁷⁹ FEMA does not believe the data and science for these broader approaches are sufficiently available and actionable for FEMA to implement at scale. As explained below, FEMA prioritized the type and criticality of the action involved, the availability and actionability of the data, and equity concerns, and determined that applying the CISA through these broader, more complex approaches is not appropriate at this time given the agency’s role in helping people recover from disasters in an expedited manner. FEMA instead decided to use consensus interagency approaches that are readily accessible to implement the CISA.

To help FEMA implement the FFRMS, the agency will leverage interagency tools. Specifically, FEMA will follow the methodology laid out in the FFRMS Job Aid to determine whether a site for a proposed action subject to the FFRMS is located within an FFRMS floodplain and if so, the FFRMS flood elevation for that site. FEMA will follow the CISA, FVA, or 0.2PFA Job Aid methodologies according to FEMA’s FFRMS policy. Consistent with the FFRMS Job Aid, FEMA finds that the CISA is currently available and actionable for low-lying coastal shorelines on the Atlantic and Gulf Coasts.⁸⁰ If a site poses other complexities, such as steep bluffs or shorelines armored by large seawalls or similar flood-control structures, the CISA is not available and actionable⁸¹ and FEMA will instead use the FVA or 0.2PFA, per the agency’s policy. For the CISA, FVA and 0.2PFA, FEMA will follow the processes outlined in 44 CFR 9.7 and in FEMA Policy 104–008–2: Guidance on the Use of Available Flood

⁷⁸ Available at https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Mar. 12, 2024).

⁷⁹ FFRMS CISA State of the Science Report, pg.5, Coastal workflow starting on pg. 11, and Riverine workflow starting on pg. 38.

⁸⁰ FFRMS Job Aid, pg. 10.

⁸¹ *Id.*

Hazard Information.⁸² For example, if a preliminary FIRM has more restrictive flood hazard data than an effective FIRM, FEMA will use the preliminary FIRM to identify the appropriate flood elevation.⁸³

Consistent with the FFRMS Job Aid, to determine whether a proposed site is located within the FFRMS floodplain under the CISA and FVA approaches, FEMA will compare the ground elevation at the site (using the U.S. Geological Survey National Map) with the FFRMS flood elevation.⁸⁴ To identify the FFRMS flood elevation under the CISA and FVA, FEMA will identify the BFE at the site or the BFE at the nearest mapped floodplain if the site is outside of the 1% annual chance floodplain. Any relevant characteristics of the action or site will be noted at this stage (e.g., service life, criticality, and flood characteristics).⁸⁵ For the CISA, FEMA will determine the FFRMS flood elevation by using the NOAA Sea Level Rise Viewer.⁸⁶ FEMA will use the service life of the action to select the scenario year.⁸⁷ For non-critical actions, FEMA will use the intermediate scenario, and for critical actions, FEMA will use the intermediate high scenario.⁸⁸ FEMA will then add the appropriate amount of sea level rise to the BFE to reach the FFRMS CISA flood elevation. If the site elevation is less than the CISA flood elevation, then the site is in the FFRMS CISA floodplain. For the FVA, 2 feet will be added to the BFE for non-critical actions or 3 feet for critical actions to determine the FFRMS FVA flood elevation.⁸⁹ If the site elevation is less than the FVA flood elevation, then the site is in the FFRMS FVA floodplain.⁹⁰ For the 0.2PFA, FEMA will compare the location of the site with the horizontal extent of the 0.2 percent annual chance floodplain using the FEMA Map Service Center or National Flood Hazard Layer.⁹¹ If the site is within the floodplain, then it is within the FFRMS 0.2PFA floodplain.⁹²

FEMA published these additional resources in the public docket with this rulemaking⁹³ to further assist the public

⁸² Available at https://www.fema.gov/sites/default/files/2020-04/Available_Flood_Hazard_Information_Policy_104-008-2.pdf (last accessed Mar. 12, 2024).

⁸³ See FFRMS Policy, pg. 5.

⁸⁴ FFRMS Job Aid, pgs. 8–9.

⁸⁵ FFRMS Job Aid, pgs. 8–9 and pgs.13–15.

⁸⁶ *Id.*, pgs. 20–23.

⁸⁷ *Id.*

⁸⁸ FFRMS Job Aid, pg. 21.

⁸⁹ FFRMS Job Aid, pg. 8.

⁹⁰ *Id.*, pgs. 8–9

⁹¹ *Id.*, pgs. 30–31.

⁹² *Id.*

⁹³ See <https://www.regulations.gov/document/FEMA-2023-0026-0007> and <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

in understanding the FFRMS and the approaches utilized, including the availability and actionability of the CISA data and how FEMA would implement the FFRMS through application of the FFRMS Job Aid methodology. FEMA will continue to collaborate across the Federal government to develop tools to facilitate the implementation of CISA and the FFRMS. The IWG recently released for comment a beta version of the Federal Flood Standard Support Tool (FFSST), a novel, interactive, map-based tool that incorporates new data to help users identify if a Federally funded project is in the FFRMS floodplain.⁹⁴

G. Summary of FEMA's Final Rule and Updated Policy

This final rule implements Executive Order 11988, as amended, the FFRMS, and the Revised Guidelines, while also updating FEMA's 8-step process. Consistent with the changes proposed in the NPRM, FEMA is incorporating a severability clause into part 9; updating definitions to implement the FFRMS and reflect current policy and practice; providing the applicable effective date for the changes made in the final rule and further clarifying the rule's scope; updating how FEMA determines whether an action is in a floodplain, consistent with the FFRMS approaches when the action is subject to the FFRMS; and adding an emphasis on nature-based approaches in the 8-step process consistent with Executive Order 11988, as amended.

In this final rule, FEMA incorporates edits to reflect commenter feedback. Specifically, in § 9.7(c)(3), FEMA is adding agencies from Federal and Indian Tribal governments as potential sources of information in making the floodplain determination. These changes better ensure that FEMA will effectively consider relevant and appropriate data in making the floodplain determination under part 9. FEMA is also making clarifying edits in § 9.5(a)(3) to clarify that copies of the legacy regulations will be available on the agency's website and to § 9.7(c)(3) to clarify that FEMA may consider information from the entities listed. FEMA is also making minor technical edits in § 9.7(c)(1)(i)(C) and § 9.11(d)(3)(ii).

FFRMS Policy

FEMA's FFRMS policy is also being finalized with the publication of this rule and will be effective with the rule's

www.regulations.gov/document/FEMA-2023-0026-0004.

⁹⁴ 89 FR 25674 (Apr. 11, 2024).

implementation. The FFRMS policy provides guidance on how FEMA will implement the FFRMS across FEMA's programs and further incorporate nature-based solutions into the 8-step process. FEMA is making minor clarifying edits to the FFRMS policy consistent with commenters' suggestions by further clarifying the use of the 0.2PFA in coastal areas and making other technical edits to the document for readability. FEMA is also clarifying in the FFRMS policy that the agency will leverage the FFRMS Job Aid when implementing the FFRMS.

III. Discussion of Public Comments and FEMA's Responses

A. Summary of Public Comments

The NPRM public comment period closed on December 1, 2023, and FEMA received 47 germane comments.⁹⁵ Commenters included non-profit organizations; individuals; local governments; State governments and State government organizations; and for-profit entities. The majority of comments were supportive of FEMA's rule and policy approach to implementing the FFRMS and other updates to part 9. Commenters focused on the regulatory impact analysis (RIA) accompanying the rule; the CISA and the data FEMA would use to determine each of the FFRMS approaches; FEMA's implementation of the FFRMS; and the 8-step process detailed in part 9. FEMA describes the specific revisions in the final rule and addresses commenters' specific concerns below.

B. Comments in Support of the Rule

The majority of commenters were generally supportive of the rule and accompanying FFRMS policy.⁹⁶ Commenters noted appreciation of FEMA's rulemaking efforts to enhance the resilience and sustainability of communities and ecosystems that are vulnerable to flooding. These commenters stated the FFRMS was a critical policy tool to reduce risks and promote sound floodplain management and wetlands protection practices, as well as fiscal responsibility.

Commenters were supportive of the agency's use of the FFRMS approaches in the rulemaking and accompanying FFRMS policy document. A commenter noted the incorporation of the CISA, FVA, and 0.2PFA reflected FEMA's commitment to using diverse and

⁹⁵ One commenter provided a duplicate comment posted to both the rulemaking and FFRMS policy comments.

⁹⁶ 22 commenters expressed direct support for the rule while 19 other commenters expressed only specific recommendations to improve the rule.

adaptive strategies based on the best-available scientific knowledge. Another commenter supported the floodplain definition revisions, stating that an expanded floodplain definition would ensure that more projects were built with resilience in mind when compared to current projects. A commenter stated FEMA's preferred CISA approach would result in Federally funded projects that were more resilient to current and future flooding and ensured a wiser use of taxpayer dollars. The commenter stated stronger standards were feasible to implement, as many jurisdictions already have existing stronger building and land-use standards. Commenters also indicated support for FEMA's emphasis on using natural systems, ecosystem processes, and nature-based approaches.

Timing

Comment: Some commenters supporting the rule requested FEMA quickly finalize and implement the final rule. While requesting FEMA work quickly to finalize and implement the rule, one commenter noted that the partial implementation policies in place did not fully implement FFRMS as they did not extend the horizontal floodplain. This commenter requested FEMA also integrate FFRMS into the minimum floodplain management standards for the NFIP. The commenter also stated FEMA should ensure FFRMS was sufficiently staffed and should develop a comprehensive plan to track enforcement and any concerns such as environmental justice to ensure effective implementation of the rule.

FEMA Response: FEMA agrees with the commenters on the importance of finalizing and implementing the rule and FFRMS policy. FEMA is issuing this final rule with an effective date of September 9, 2024. As explained in § 9.5(a)(3), the FFRMS applies only to new actions for which assistance is made available pursuant to declarations under the Stafford Act that are commenced on or after the effective date of the final rule, and new actions for which assistance is made available pursuant to notices of funding opportunity that publish on or after the effective date of the final rule.⁹⁷

⁹⁷ Note that FEMA first partially implemented the FFRMS by policy with respect to covered projects in existing floodplains in its Public Assistance and Hazard Mitigation Assistance programs. See FEMA Policy 104-22-003, "Partial Implementation of the Federal Flood Risk Management Standard for Public Assistance (Interim)," June 3, 2022 found at https://www.fema.gov/sites/default/files/documents/fema_fp-104-22-0003-partial-implemetnation-ffrms-pa-interim.pdf (last accessed Jan. 24, 2024) and FEMA Policy 206-21-003-0001, "Partial Implementation of the Federal Flood Risk

FEMA declines to accommodate the commenter's request to integrate the FFRMS into the minimum floodplain management standards for the NFIP because it is beyond the scope of this rulemaking. The NFIP is a program through which property owners in participating communities can purchase Federal flood insurance as a protection against flood losses.⁹⁸ As a condition of eligibility, a community must adopt and enforce floodplain management regulations that meet or exceed the NFIP minimum floodplain management criteria developed by the Administrator.⁹⁹ Further information regarding FEMA's minimum floodplain management standards for the NFIP can be found at 44 CFR part 59 *et seq.* Because this rule only applies to "actions subject to the FFRMS,"¹⁰⁰ this rule does not change any FEMA standards applicable to community or individual participation in any aspect of the NFIP. In general, changes to 44 CFR part 59 *et seq* would require a rulemaking to revise the appropriate sections of the CFR.

As an illustrative example, if an NFIP-participating community owns a structure in a floodplain that has been substantially damaged and the community decides to repair it using community funds, funding from a flood insurance payment, or other funding that is not FEMA grant funding, the community's floodplain management regulations, not the FFRMS, would apply to the repair project. However, if that same structure was substantially damaged by a disaster event, and the community applied for assistance under a FEMA grant program like the Public Assistance program, the FFRMS would apply to that repair project.

Management Standard for Hazard Mitigation Assistance Program," Dec. 7, 2022 found at https://www.fema.gov/sites/default/files/documents/fema_policy-fp-206-21-003-0001-implementation-ffrms-hma-program_122022.pdf (last accessed Jan. 24, 2024). Some current FEMA actions may be subject to these partial implementation policies; however, those actions would not be subject to this final rule or policy.

⁹⁸ 42 U.S.C. 4011(a).

⁹⁹ 42 U.S.C. 4011(a) and (b); 42 U.S.C. 4102; 44 CFR 59.2(b), 59.22(a)(3), 60.1(d).

¹⁰⁰ See "Guidelines for Implementing Executive Order 11998, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input," 80 FR 64008 (Oct. 22, 2015) (providing notice of the availability of the Revised Guidelines in the docket for the rulemaking at <https://www.regulations.gov/document/FEMA-2015-0006-0358> (main content) and <https://www.regulations.gov/document/FEMA-2015-0006-0372> (appendices)) also available at https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11998-13690-10082015.pdf (last accessed Mar. 11, 2024).

FEMA agrees with the commenter that it is important to adequately staff for FFRMS implementation. FEMA is accordingly ensuring that sufficient staff at headquarters and regional offices are appropriately trained to provide technical assistance. FEMA currently leverages the 8-step process detailed in 44 CFR part 9 as the mechanism to implement Executive Order 11988. Step 8 of the process found at 44 CFR 9.6(b) requires FEMA to review the implementation and post-implementation phases of the proposed action to ensure that the requirements stated in § 9.11 are fully implemented. Under this provision, oversight responsibility is integrated into existing processes associated with FEMA's grant management requirements. FEMA is not making changes to these requirements in the final rule and will continue to use the current process to ensure compliance with the FFRMS and Executive Order 11988, as amended. 2 CFR 200.339 also allows FEMA to take action to remedy a recipient's noncompliance with federal requirements, including those required by 44 CFR part 9, such as imposing new conditions on the award or deobligating funding for the award if a recipient does not adhere to the requirements set forth during the part 9 review process.

C. Comments in General Opposition to the Rule

Four commenters expressed opposition to the rule overall. Those commenters raised concerns about the complexity of the FFRMS approaches, uncertainty about the CISA standard, and the application of FFRMS to specific types of FEMA actions. The commenters stated concerns with the potential increased costs associated with implementing FFRMS and with FEMA's economic impact analysis accompanying the rule. The commenters also stated concerns with implementing the FFRMS given conflicting Federal, State, local, and other requirements. Commenters stated the FFRMS was a "one-size-fits-all" approach that lacked the flexibility to address regional and local needs. Commenters stated the use of the CISA introduced uncertainty into the regulations contrary to the fundamental principles outlined in Executive Orders 12866 and 13563. Commenters also stated FEMA's analysis of the costs and benefits associated with the rulemaking did not adequately quantify the costs and benefits of several components of the risk reduction strategies in the rule. Commenters raised questions regarding FEMA's statutory authority to implement the rule. One commenter

stated Congress should define the floodplain. This commenter raised similar concerns regarding the use of the CISA and lack of data sources that map the FFRMS floodplain. FEMA responds to some of the general comments in opposition to the rule in the comment summaries and responses immediately below and responds in more detail to the remainder of the comments in the following sections of the preamble.

Comment: One commenter requested FEMA extend the comment deadline associated with the rule for an additional 60 days. The commenter requested an extension of the comment period given the complexity of the rule and policy and to implement extensive public outreach.

FEMA Response: FEMA received 48 comments to the public docket associated with this rulemaking and no other requests to extend the comment period were received. The 60-day comment period provided is consistent with 44 CFR 1.3(b) and Executive Orders 12866 and 13563. This timeframe provided a reasonable opportunity for public comment and is particularly appropriate given FEMA's prior engagement on this topic. FEMA completed extensive outreach in 2015 as part of the development and publication of the Revised Guidelines, and also sought public input in connection with the agency's prior NPRM in 2016.¹⁰¹ Additional outreach will be completed as part of the rule's implementation as FEMA will distribute additional information to SLTT partners and the public explaining again what the

FFRMS is and how the agency will further implement the Executive Orders. FEMA's FFRMS policy will also be reassessed on a four-year cycle to ensure the approach continues to meet the goals of Executive Order 11988, as amended. During the four-year review process, FEMA's FFRMS policy will be reviewed, revised, extended, and/or rescinded as appropriate.

FEMA does not believe additional engagement is needed to finalize this rule. All but a few of commenters expressed support for the rule and FEMA's FFRMS policy and many requested swift implementation, consistent with the need to protect federal dollars and communities from increasing flood risk.

Comment: One commenter stated the rulemaking was premature in the absence of a clearly defined process for implementing the CISA and urged FEMA to withdraw the rule from consideration. The commenter expressed concern that FEMA will take a haphazard approach—completing each analysis of the extent and elevation of the CISA floodplain on a case-by-case basis and doing so using data that may not be complete or is not widely known or available to the public. The commenter stated that in the end, neither the process nor the outcome will be predictable or replicable.

FEMA Response: FEMA disagrees. This rulemaking is not premature, and FEMA provided information in and accompanying the NPRM explaining how the CISA and the FFRMS will be implemented. Each analysis will be completed on a case-by-case basis consistent with the current 8-step process, which has been in place for over four decades, to determine the floodplain, but the data used to make the analysis is publicly available and replicable using the FFRMS CISA State of the Science Report, the FFRMS Job Aid, and FEMA's FFRMS policy. As explained above, the FFRMS CISA State of the Science Report identifies the latest sea level rise projections from the National Climate Assessment as available and actionable data and the appropriate sea level rise estimates can be used to approximate future 1 percent annual chance flood levels. These estimates can simply be added to the current 1 percent annual chance flood elevation to approximate the future 1 percent annual chance flood level, in low-lying coastal shorelines on the Atlantic and Gulf Coasts not subject to runcup or overtopping. The FFRMS Job Aid¹⁰² provides the methodology FEMA

will use to determine the floodplain and elevation under the CISA where data is actionable and available (namely in low-lying coastal shorelines on the Atlantic and Gulf Coasts consistent with the FFRMS CISA State of the Science Report). FEMA's FFRMS policy further explains that the CISA is used where actionable and available and provides alternatives where such data is not actionable and/or available. The CISA analysis can be completed using these publicly available materials for areas with actionable and available data. FEMA anticipates actionable and available data will increase over time and the interagency tools provided will be updated to reflect the new data.

Comments: Two commenters requested FEMA complete additional analyses before finalizing the rule. Both commenters referenced other flood-related regulatory and policy actions, including the Technical Mapping Advisory Council (TMAC)'s proposal to increase the regulatory floodplain and increase the NFIP floodplain management standards for land management and use; Risk Rating 2.0 for flood insurance premiums; and USACE's proposed levee safety updates as well as risk informed decision making.

One commenter requested the rule be deferred until FEMA completed a cumulative impacts assessment and considered associated actions to mitigate the impacts of the actions above on communities participating in the NFIP, mapping and accreditation, low to moderate income families, and disadvantaged communities. The commenter further requested FEMA withdraw the rule until a regulatory analysis applying sound cost-benefit analysis principles and a comprehensive socio-economic impact analyses to address the full and intended scope of FFRMS were completed. The commenter stated the regulatory impact analysis should address cumulative impacts and the need for mitigation of impacts to community property values, tax bases, the distribution of real income, as well as the impacts on affordable housing and low to moderate income families and disadvantaged communities.

The other commenter stated that different flood regulations and policies may overlap with or duplicate each other and potentially lead to redundancy, confusion, and additional costs. The commenter requested FEMA conduct a more thorough quantitative cost-benefit analysis, considering the

¹⁰¹ Established by the 2013 Climate Action Plan, the Climate Task Force met with stakeholders from State, local, Tribal, and territorial governments; private businesses; trade associations; academic organizations; civil society; and other stakeholders to develop and provide recommendations in November 2014. President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience, *Recommendations to the President*, (2014), available at https://obamawhitehouse.archives.gov/sites/default/files/docs/task_force_report_0.pdf at 7 (last accessed Jan. 24, 2024). FEMA, acting on behalf of the MitFLG and consistent with Executive Order 13690, published a draft of the Revised Guidelines for notice and comment on February 5, 2015 at 80 FR 6530. During the public comment period, over 25 meetings were held across the country with State, local, and Tribal officials and interested stakeholders to discuss the Revised Guidelines. There were also 9 public listening sessions across the country that were attended by over 700 participants from State, local, and Tribal governments, and other stakeholder organizations to discuss the Revised Guidelines. The final Revised Guidelines were published on October 22, 2015 at 80 FR 64008. FEMA published a notice of proposed rulemaking to implement FFRMS initially in 2016 at 81 FR 57402 (Aug. 22, 2016) along with a notice of availability and request for comment on a FFRMS policy at 81 FR 56558 (Aug. 22, 2016) and a notice of availability regarding a draft report at 81 FR 64403 (Sept. 20, 2016).

¹⁰² Available at [https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-](https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf)

[determination-job-aid.pdf](https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf) (last accessed Mar. 12, 2024).

cumulative effects of recent floodplain governing rules to make well informed decisions regarding appropriate risk reduction strategies and ensure a thorough understanding of the overall impact of the rule's implementation. The commenter requested FEMA conduct a comprehensive assessment of cumulative impacts to ensure a more informed and coordinated approach and requested that FEMA provide additional documentation on how FFRMS would impact other Federal agencies' programs, such as USACE's civil works projects and whether FEMA's FFRMS policy would supersede other Federal agencies' rules and regulations. The commenter stated FEMA relied on a subjective assessment of the rule's costs and benefits. The commenter asked FEMA to closely coordinate with other agencies that typically co-regulate projects, including USACE with water resources projects.

The commenter also stated that the FFRMS could lead to further deterioration of key infrastructure, where meeting the new, higher standards is not technically or financially feasible, resulting in communities leaving the infrastructure to deteriorate in place and not serve the public need. The commenter stated that these types of costs should be considered in the regulatory analyses.

FEMA Response: FEMA disagrees this rule should be deferred. While FEMA understands the commenters' interest in the policy activities mentioned, the agency does not believe those actions are relevant to this rulemaking or require additional analysis to finalize this rule. The commenters reference a recommendation made by the TMAC in a recent annual report¹⁰³ that FEMA expand the NFIP regulatory floodplain as defined in 44 CFR 59.1 to which the NFIP's minimum floodplain management criteria set forth in 44 CFR 60.3 applies, and the commenters suggest that FEMA must delay this rulemaking until it has analyzed the effects of that recommendation. That is not necessary because FEMA has not implemented the TMAC recommendation and therefore it has no current effect on communities. The TMAC is a Federal advisory committee established to review and make recommendations to FEMA on matters related to the national flood mapping program authorized under the Biggert-Waters Flood Insurance Reform Act of

2012.¹⁰⁴ The national flood mapping program requires FEMA to review, update, and maintain NFIP rate maps.¹⁰⁵ It is outside the scope of this rule.

The commenters also refer to the NFIP's pricing approach¹⁰⁶ for NFIP policyholders as a new "flood regulation" that requires analysis prior to finalizing this rulemaking. However, this rulemaking does not impact the NFIP's site-specific actions, such as how FEMA rates the premium for a flood insurance policy. Further, the population of NFIP policyholders is much larger than the number of FEMA grant recipients who will be impacted by this rule.

One commenter states FEMA needs to account for how the rule will impact mapping and accreditation under the NFIP; however, the rule does not appreciably impact those areas of the NFIP. This rule and the accompanying policy implement the FFRMS for actions where FEMA funds are used for new construction, substantial improvement or repairs to address substantial damage, and requires that nature-based solutions and natural features be considered and implemented where possible to all actions that are subject to Step 3 of the 8-step decision-making process. Nature-based solutions and natural features must be considered as an alternative action in Step 3. Where it is not possible to use natural features and nature-based solutions as an alternative on their own, they would be considered in conjunction with the proposed action as a minimization measure in Step 5. Neither FEMA's flood mapping program nor its accreditation of levees under the NFIP are actions subject to the FFRMS and, to the extent that any programmatic or policy change to either of those areas are required to undergo the 8-step process under 44 CFR part 9, it is unlikely that a consideration of nature-based solutions will result in changes with demonstrable impacts. FEMA cannot address the other actions referenced, such as the USACE's civil works projects and levee safety updates, as these involve other Federal agencies, and questions regarding those actions are best addressed by those agencies directly.

FEMA believes that the commenter's concerns about this rule's economic impacts is inconsistent with this rule's relatively limited applicability. FEMA

defines an "action subject to the FFRMS" as "any action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility," consistent with Executive Order 11988, as amended, and the Revised Guidelines. The FFRMS applies to grants for projects funding the new construction, substantial improvement, or repair of substantial damage under FEMA programs such as the IA, PA, and HMA programs, and grants processed by FEMA's Grants Programs Directorate (GPD) (involving grants for preparedness activities). This rule does not regulate privately funded activity in the floodplain. As such, the implementation of the FFRMS will have negligible impacts on community property values, tax bases, and the distribution of real income. Additionally, FEMA expects the impacts on affordable housing for low to moderate income households and disadvantaged communities to be minimal since most actions subject to FFRMS requirements are non-residential. FEMA only funds residential construction in the IA and HMA programs; FEMA funds 153 residential IA projects and 268 HMA residential projects per year on average. The majority of the costs associated with FFRMS requirements will be covered by FEMA funding.

Comment: A commenter stated the FFRMS policy and rule were one-sided, as they limited how people could use and live in flood-prone areas without a clear goal to support economic growth or sensible development within reasonable limits. The commenter stated Congress likely would not endorse a flood risk strategy that did not consider using flood-prone areas optimally for the country's benefit. The commenter stated the rule's benefits were unclear given the emphasis on constraints and a lack of consideration for economic development as part of resilience. The commenter recommended that FEMA adjust the policy to include efficient and smart use of flood-prone areas while acknowledging the limitations on development.

FEMA Response: The revisions to part 9 are consistent with FEMA's long-standing requirement as part of implementation of Executive Order 11988, as amended, to only perform or fund actions within or affecting floodplains and wetlands if those actions are the only practicable alternative. FEMA's regulations provide for consideration of the need for economic development and community resilience, while also bolstering the resilience of communities and Federal

¹⁰³ TMAC 2023 Interim Report, available at https://www.fema.gov/sites/default/files/documents/fema_rm-tmac-2023-interim-report-30OCT2023.pdf (last accessed Mar. 28, 2024).

¹⁰⁴ 42 U.S.C. 4101a.

¹⁰⁵ 42 U.S.C. 4101b.

¹⁰⁶ Also known as Risk Rating 2.0, Equity in Action. See <https://www.fema.gov/flood-insurance/risk-rating> (last accessed Mar. 18, 2024).

assets against the impacts of flooding. For instance, through the 8-step process, FEMA considers alternative locations, alternative actions, natural features, nature-based approaches, and the no action alternative under the practicability analysis. The definition of “practicable” makes clear that practicability depends on the situation and includes consideration of all pertinent factors, such as natural environment, social concerns, economic aspects, legal constraints, and agency authorities. In addition, if there is no practicable alternative, FEMA will perform or fund the action in the floodplain or wetland and will minimize any adverse impacts when doing so. Under § 9.9 as well, in determining the practicability of the alternatives, FEMA considers economic aspects.

D. FEMA’s Authority for Part 9 and Revisions

Two commenters wrote comments concurring with FEMA’s statutory and other authority for the rulemaking.

Comments: Both commenters stated the rule was a valid use of FEMA’s regulatory authority, citing to the NFIA, as amended by the Flood Disaster Protection Act (42 U.S.C. 4001 *et seq.*), the Stafford Act (42 U.S.C. 5121 *et seq.*), and the NEPA (42 U.S.C. 4321 *et seq.*). One commenter noted the Congressional intent in the Stafford Act for the Federal Government to develop land use and construction regulations to help State and local governments mitigate risk and reduce losses and FEMA’s broad discretion to define “safe land use and construction practices” as a condition of Stafford Act funding for both public and private structures.¹⁰⁷ The commenter stated section 101 of NEPA required FEMA to use all practicable means to ensure Federal plans, programs, and resources “(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings; [and] (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences” among other priorities.¹⁰⁸ The commenter stated the FFRMS reflects a tradition of executive action to enforce reasonable floodplain management and wetland protection. Another commenter noted the NFIA and Flood Disaster Protection Act require FEMA to establish land use criteria for

floodplain management¹⁰⁹ and that NEPA requires Federal agencies to evaluate the environmental and related social and economic effects of their proposed actions, which includes the evaluation of the impacts of proposed actions in the floodplains.¹¹⁰ Further, the commenter stated the Stafford Act directed FEMA to encourage “hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations.”¹¹¹ The commenter stated FEMA’s regulations were consistent with these legislative directives.

FEMA Response: FEMA agrees with the commenter that the agency has statutory authority to implement FFRMS. Please refer to section II.B for a description of FEMA’s statutory authority to implement grant programs and to require its grant recipients to carry out repairs or construction in accordance with specific standards.

Three commenters raised concerns regarding FEMA’s legal authority to amend part 9 and implement FFRMS.

Comment: One commenter stated Congress should establish the definition of floodplains. The commenter acknowledged defining the geographic scope of a floodplain was not an easy task, but stated the implications on landowners and others made it a job best left for Congress. The commenter stated that Congress drafted and debated language over the last twenty plus years on the issue and stated that Congress has had the opportunity to revisit and refine Federal floodplain policies as part of NFIP regular reauthorization process. The commenter stated it was bad public policy to delegate defining the limits of Federal authority to the agencies, citing to challenges other agencies have had defining “waters of the United States” and reiterating the need for Congressional action.

FEMA Response: This comment appears to confuse the definition of floodplain under the NFIP with the definition of floodplain that is being altered with this rulemaking, and, as such, makes incorrect statements and assumptions about the role Congress has played or should play. This rulemaking is not altering the definition of floodplain under the NFIP. The NFIP is a program through which property owners in participating communities can purchase Federal flood insurance as a protection against flood losses.¹¹² As a condition of eligibility, a community must adopt and enforce floodplain

management regulations that meet or exceed the NFIP minimum floodplain management criteria developed by the Administrator.¹¹³ The floodplain and other definitions governing the NFIP can be found at 44 CFR 59.1. This rulemaking is updating the definition of floodplain in 44 CFR part 9 as applied to actions subject to the FFRMS, defined as actions where FEMA funds are used for new construction, substantial improvement, or repairs to address substantial damage to structures and facilities.¹¹⁴ As set forth, in section II.B, Congress has authorized FEMA to implement grant programs and to require its grant recipients to carry out repairs or construction in accordance with specific standards.

Comment: Two commenters requested FEMA cite the specific and clear Congressional authority for each objective and mandate of FFRMS. Both commenters noted the President may have the authority to impose mandates on Federal projects as cost-saving measures, but regulation of private and non-Federal activities within the floodplain was limited to those jurisdictions where local communities have imposed upon themselves the burden of floodplain regulation as a condition of participation in the NFIP. The commenters stated that applying the FFRMS to private and non-Federal government entities under other regulatory programs was outside FEMA’s statutory authority.

FEMA Response: Please refer to section II.B for a description of FEMA’s statutory authority to implement grant programs and to require its grant recipients to carry out repairs or construction in accordance with specific standards. Contrary to the commenter’s assertions, this rule applies the FFRMS to FEMA funded projects for new construction, substantial improvement, and repairs to address substantial damage. It does not regulate privately funded activity in the floodplain, it does not alter the definition of floodplain under the NFIP, and it does not apply

¹¹³ 42 U.S.C. 4011(a) and (b); 42 U.S.C. 4102; 44 CFR 59.2(b), 59.22(a)(3), 60.1(d).

¹¹⁴ See “Guidelines for Implementing Executive Order 11998, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,” 80 FR 64008 (Oct. 22, 2015) (providing notice of the availability of the Revised Guidelines in the docket for the rulemaking at <https://www.regulations.gov/document/FEMA-2015-0006-0358> (main content) and <https://www.regulations.gov/document/FEMA-2015-0006-0372> (appendices)) also available at https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf (last accessed Mar. 11, 2024).

¹⁰⁷ 42 U.S.C. 5165a.

¹⁰⁸ 42 U.S.C. 4331(b).

¹⁰⁹ 42 U.S.C. 4102, 42 U.S.C. 4104c.

¹¹⁰ 42 U.S.C. 4332(2)(C).

¹¹¹ 42 U.S.C. 5121(b)(5).

¹¹² 42 U.S.C. 4011(a).

the FFRMS to any programs other than FEMA's grant programs.

Comment: One of the commenters stated that FEMA was acting without clear statutory authority as implementing the FFRMS fell within the scope of a major question because of the standard's aggregate economic impacts over time. Two commenters recommended FEMA remove any application of FFRMS to private and non-Federal activities covered by permitting, loan, or grant-in-aid programs administered by Federal agencies except where clear statutory authority has been granted and also sever any and all objectives related to regulating floodplain activities to protect wetlands. The commenters stated Federal authority over wetlands was limited by the Clean Water Act and recent Supreme Court rulings, including *Sackett v. EPA*.¹¹⁵

FEMA Response: FEMA disagrees the aggregate economic impacts over time associated with this rulemaking are a matter of such "deep economic and political significance" as to constitute a "major question," as described by the Supreme Court in *West Virginia v. EPA*.¹¹⁶ While FEMA expects that this rule would carry important benefits and would ultimately save significant taxpayer dollars, this rule is not akin to the rule in *West Virginia*, where the agency's "own modeling concluded that the rule would entail billions of dollars in compliance costs (to be paid in the form of higher energy prices), require the retirement of dozens of coal-fired plants, and eliminate tens of thousands of jobs across various sectors."¹¹⁷ This rulemaking requires FEMA grant recipients to build a subset of the construction projects that FEMA funds to a higher standard in an expanded floodplain. There is an increase in the costs associated with this more resilient building standard, but that increase is paid primarily by FEMA and is ultimately a fraction of what grant recipients might already spend using Federal funds to accomplish such construction.

Even if the major questions doctrine did apply, there is clear statutory authority and longstanding precedent for the rule. FEMA has authority to require application of the FFRMS as a condition of funding in its grant programs based on the grant programs' authorizing statutes. Congress granted FEMA the authority to provide Federal assistance through multiple grant programs under the Robert T. Stafford

Disaster Relief and Emergency Assistance Act (Stafford Act),¹¹⁸ the NFIA,¹¹⁹ the Homeland Security Act of 2002,¹²⁰ the Federal Fire Prevention and Control Act of 1974,¹²¹ the Earthquake Hazards Reduction Act of 1977,¹²² and various other appropriations acts. Under each of these authorities, FEMA may set grant eligibility criteria consistent with the respective purposes of such programs and FEMA's mission, including to protect Federal investments from the risks of further damage.¹²³ Under the Stafford Act and the NFIA, which authorize the programs that fund the majority of the actions subject to the FFRMS, FEMA has general rulemaking authority.¹²⁴ Further, FEMA has explicit authority under the Stafford Act to set the minimum standards for safe land use and construction standards required in the repair or construction of private and public facilities.¹²⁵ Further, in the time since Executive Order 11988 was first issued in 1977 and FEMA issued its implementing regulations at 44 CFR part 9 in 1979 and 1980, Congress has amended FEMA's governing authorities multiple times without overriding part

¹¹⁸ 42 U.S.C. 5121 *et seq.*

¹¹⁹ 42 U.S.C. 4001 *et seq.*

¹²⁰ 6 U.S.C. 101 *et seq.*; *see also* 6 U.S.C.

314(a)(12), which specifically charges the Administrator with supervising various grant programs authorized under the HSA. Such grant programs have long been governed by floodplain management regulations at 44 CFR part 9, *see, e.g.*, 44 FR 76510 (Dec. 27, 1979), 45 FR 59520 (Sept. 9, 1980). *See also, e.g.*, 2 CFR 200.300(a) (directing Federal awarding agencies to manage and administer Federal awards in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements including, but not limited to, those protecting public welfare and the environment; and requiring the Federal awarding agency to communicate to the non-Federal entity all relevant public policy requirements, and incorporate them either directly or by reference in the terms and conditions of the Federal award.).

¹²¹ 15 U.S.C. 2229 and 2229a.

¹²² 42 U.S.C. 7701 *et seq.*

¹²³ *See, e.g.*, 6 U.S.C. 609 (granting FEMA approval authority over grant funds for construction awards under its Homeland Security Grant Program, State Homeland Security Grant Program, Urban Area Security Initiative, Operation Stonegarden, Tribal Homeland Security Grant Program, and Nonprofit Security Grant Program); 6 U.S.C. 1182(d)(1) (granting DHS the authority to determine the grant requirements for the Intercity Bus Security Grant Program); 6 U.S.C. 1163(c)(1) (granting FEMA the authority to determine the grant requirements for the Intercity Passenger Rail grant program); 46 U.S.C. 70101 (granting DHS approval authority over grant funds for construction awards under the Port Security Grant Program); 6 U.S.C. 1135(c)(1) (granting DHS the authority to determine the grant requirements for the Transit Security Grant Program); 33 U.S.C. 467f-2(c)(2)(A) (granting FEMA the authority to set the minimum eligibility requirements for the Rehabilitation of High Hazard Dam Program).

¹²⁴ *See* 42 U.S.C. 5164; 42 U.S.C. 4128(a) and (b).

¹²⁵ 42 U.S.C. 5165a(a)(1)-(2).

9.¹²⁶ Consistent with the approach that FEMA has taken for decades, this rule revises part 9 pursuant to FEMA's statutory authorities and in line with Executive Order 11988, as amended.

Finally, the comments related to wetlands and the Supreme Court's decision in *Sackett v. EPA* are not germane to this rulemaking. FEMA's proposed changes to the definition of wetlands within the regulation was limited to reorganizing the placement of examples within the definition and removing an outdated resource. FEMA's proposed changes do not change how the agency makes wetland determinations.

E. Definitions

FEMA received over 40 specific comments on the proposed rule's definitions in § 9.4. Commenters were generally supportive of the proposed revisions but sought clarification or offered suggestions to enhance the definitions provided in the proposed rule. FEMA has carefully reviewed the commenters' suggestions and is not revising the NPRM definitions in this final rule but is providing multiple clarifications below.

1. General Comments on Definitions

Comments: Commenters requested additional clarity regarding definitions and additional engagement on definitions generally. A commenter requested FEMA provide clear definitions and describe abbreviations before they are used in the rulemaking, policy, and any additional guidance or resources provided. The commenter provided an example of the term "AC floodplain" used in a graphic without definition. Another commenter requested FEMA engage stakeholders from a range of relevant backgrounds in the review process to gather varied perspectives and ensure that definitions are clear and universally understood.

FEMA Response: FEMA will distribute additional resources to the public and SLTT partners after the rule's publication to ensure that stakeholders understand what the FFRMS is and how the agency will implement the revised part 9. These resources will include additional examples to help applicants better understand the FFRMS as they apply for FEMA programs. FEMA appreciates the

¹²⁶ *See, e.g.*, Disaster Mitigation Act of 2000, Public Law 106-390, 114 Stat. 1552 (Oct. 30, 2000); Post-Katrina Emergency Management Reform Act of 2006, Public Law 109-295, 120 Stat. 1452 (Oct. 4, 2006); Sandy Recovery Improvement Act of 2013; Public Law 113-2, 127 Stat. 47 (Jan. 29, 2013); Disaster Recovery Reform Act of 2018, Public Law 115-254, 132 Stat. 3448 (Oct. 5, 2018).

¹¹⁵ *Sackett v. EPA*, 598 U.S. 651 (2023).

¹¹⁶ 142 S. Ct. 2587 (2022).

¹¹⁷ *Id.* at 2604.

commenter's concern and has updated Figure 1 in the FFRMS policy to clarify "AC floodplain" means "annual chance floodplain."

FEMA engaged stakeholders as part of the development and publication of the Revised Guidelines, which contain most of the definitions FEMA uses in this rulemaking. Stakeholders also provided specific feedback on the definitions in § 9.4 as part of this rulemaking effort and FEMA addresses their concerns in this final rule.

2. 0.2PFA

Comment: A commenter expressed support for the definition of the 0.2 percent annual chance flood elevation (0.2PFA), agreeing with the use of the terminology similar to annual exceedance probability for defining flow, floodplains, and water surface elevation in the floodplain.

FEMA Response: FEMA appreciates the commenter's consideration of the definition.

3. Agency

Comment: One commenter requested clarification on how the term "agency" was defined under part 9.

FEMA Response: FEMA defines "agency" in § 9.4 as "the Federal Emergency Management Agency (FEMA)." FEMA is not changing the definition of "agency" in this final rule.

4. Critical Action

Comments: Five commenters asked FEMA to further clarify the definition of "critical action," stating the definition was too vague and left too much room for interpretation. Commenters asked for a list of examples of critical actions to support the definition in § 9.4 and/or sufficient information to distinguish between critical and non-critical actions. One commenter asked FEMA to provide examples related to the transportation sector and recommended roadways, bridges, and culverts not be considered critical actions. One commenter requested a process for local representatives to provide input on what constitutes critical action/critical facilities.

FEMA Response: FEMA's definition of "critical action" is consistent with Executive Order 11988, as amended, through the 1978 Guidelines and further clarified in the Revised Guidelines. FEMA notes the term "critical action" is not new but was developed and implemented initially with Executive Order 11988 in 1977. The Revised Guidelines provide further details on what constitutes a critical action. FEMA will leverage the information in the Revised Guidelines when providing

additional guidance to stakeholders. The determination of whether an action to create or extend the useful life of a structure or a facility is a critical action is generally made on a case-by-case basis consistent with the information found in the Revised Guidelines. Local representatives have input on whether a particular action is a "critical action" as part of the agency's 8-step process.

5. Federal Action

Comment: Two commenters sought clarification on the term "Federal action." Commenters sought clarification on what is a "Federal action" subject to the FFRMS and stated confusion and inconsistency could result among different Federal agencies and programs implementing the FFRMS. One commenter asked for additional clarification on whether specific FEMA programs were subject to the FFRMS. That commenter also sought clarification on how the FFRMS would interact with other Federal laws and regulations that govern floodplain management, such as the NFIP, NEPA, and the Endangered Species Act (ESA).

FEMA Response: In this rulemaking, FEMA revises § 9.4 to define "action subject to the FFRMS" as "any action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility." As explained above, the requirements of this rule apply to grants for projects funding the new construction, substantial improvement, or repair of substantial damage under FEMA programs such as IA, PA, and HMA programs, and grants processed by FEMA's GPD.

Part 9 only applies to FEMA actions. Other Federal agencies will implement FFRMS through their own regulations and/or policies. To ensure consistency, all Federal agencies will utilize the Revised Guidelines in their own FFRMS implementation. Per 44 CFR 9.11(d)(6), no action may be taken if it is inconsistent with the NFIP or any more restrictive Federal, State, or local floodplain management standards.

FEMA funding actions are also evaluated pursuant to the NEPA, ESA, and other environmental and historic preservation requirements. The Federal action will not be approved unless it meets all applicable environmental and historic preservation requirements.

6. Floodplain

Comments: A commenter requested FEMA coordinate with the agency's TMAC to ensure the new rule's definition of "floodplain" in § 9.4 accounts for potential changes in the definition and mapping of floodplains

recommended by the TMAC. Another commenter asked how the floodplain would be defined in the FFRMS and if the floodway would be considered a regulatory floodplain. The commenter stated it was unclear how the expanded horizontal FFRMS floodplain would impact future State Department of Transportation's maintenance work in coordination with the Federal Highway Administration (FHWA).

FEMA Response: FEMA appreciates the commenter's concerns. The purpose of TMAC is to provide analysis under the NFIA. The requirements of Executive Order 11988, as amended, are distinct from TMAC recommendations and thus FEMA disagrees with the commenter that coordination with TMAC is required to finalize this rule. As explained above, the TMAC is a Federal advisory committee established to review and make recommendations to FEMA on matters related to the national flood mapping program authorized under the Biggert-Waters Flood Insurance Reform Act of 2012.¹²⁷ The national flood mapping program requires FEMA to review, update, and maintain NFIP rate maps.¹²⁸ While the framework FEMA uses in part 9 is distinct from mapping recommendations for flood prone areas TMAC made in their recent annual report, FEMA believes that the flexibility outlined in 44 CFR 9.7 and the practice of using the best available information will allow the application of part 9 to adjust to any change made in the mapping process should FEMA adopt any of the TMAC recommendations.

As explained in the NPRM in 44 CFR 9.4, FEMA defines the "Federal Flood Risk Management Standard Floodplain" as the floodplain established using one of the approaches described in 44 CFR 9.7(c). The floodway and the regulatory floodway are also defined in 44 CFR 9.4 and are within the floodplain for purposes of part 9. The requirements of this rule will apply to actions funding the new construction, substantial improvement, or repair of substantial damage under FEMA programs such as IA, PA, and HMA programs, and grants processed by FEMA's GPD. Roads that are under the jurisdiction of another Federal agency, such as those under the FHWA, are subject to that agency's requirements as they generally are ineligible for funding under FEMA's grant assistance programs.

¹²⁷ 42 U.S.C. 4101a.

¹²⁸ 42 U.S.C. 4101b.

7. Nature-Based Approaches

While some commenters expressed support for the definition of “nature-based approaches” in the rule, other commenters requested specific revisions.

Comment: One commenter stated the definition of “nature-based approaches” failed to take into account a design intent to protect or restore natural processes; and did not include reference to hybrid gray/green solutions that might be required for restoring habitat, attenuating floods, and keeping communities safe. The commenter suggested a definition closer to the “nature-based solutions” definition published on FEMA’s website. The commenter requested FEMA work with other Federal agencies to agree on common definitions for key terminology. Further, the commenter recommended that FEMA remove language stating that nature-based approaches “generally, but not always, must be maintained in order to reliably provide the intended level of service,” because maintenance requirements are highly variable and are also generally necessary to maintain grey infrastructure. The commenter stated that “nature-based solutions specifically aim to work with nature (as opposed to grey infrastructure solutions that often are designed to control or work against nature processes) and therefore can be less susceptible to catastrophic failure or repeated maintenance and can require lower maintenance costs overall.” This commenter also requested FEMA include “green infrastructure” when describing the definition. The commenter recommended FEMA include a broader range of ecosystem-based activities in the description of natural and nature-based actions, especially those more appropriate for larger or more rural floodplains. The commenter provided specific scenarios of nature-based approaches.

FEMA Response: FEMA appreciates the commenter’s concerns and believes the definition as written is appropriate. The definition is consistent with the glossary definition in the Revised Guidelines. The Revised Guidelines provide broad guidance in implementing Executive Order 11988, as amended and “offer a common point of reference so that each agency can use or amend their procedures as appropriate.”¹²⁹ Consistency with the Revised Guidelines definition helps ensure more consistent implementation of nature-based approaches across the Federal government and meets the

commenter’s request for FEMA to utilize common terminology with other Federal agencies. Changes such as those proposed by the commenter would increase the potential for inconsistency and stakeholder confusion working on projects involving multiple Federal agencies.

FEMA notes that the Revised Guidelines state that nature-based approaches can restore natural processes, and the agency does not believe the definition excludes either protecting or restoring natural processes. For purposes of part 9, nature-based solutions are specific to floodplains and wetlands, and the commenter’s references to nature-based solutions on the agency’s website reflects the full range of natural hazards FEMA programs may mitigate. Regarding maintenance, FEMA believes the language is appropriate in the definition as written. The use of “maintenance” is to differentiate between nature-based approaches and natural features. Nature-based approaches are designed to mimic natural processes, but they are not wholly naturally occurring. As such, they may require some form of maintenance to ensure they are performing as intended. In comparison, natural features are those characteristics of the environment that are naturally occurring and exist in a dynamic equilibrium, so should require little to no maintenance in serving their purpose. FEMA understands the commenter’s concern that “green infrastructure” is more expansive than stated in the NPRM and plans to provide additional resources that will incorporate examples to address some of the specific scenarios raised by the commenter. FEMA notes the definition of “nature-based approaches” states that nature-based approaches are sometimes referred to as “green infrastructure.”

Comments: Two other commenters requested edits to the definition of “nature-based approaches” to incorporate restoration and conservation of natural systems. The commenters stated that such edits would ensure all relevant nature-based approaches are adequately considered. Another commenter recommended expanding the definition of “nature-based approaches” by removing the reference to “green infrastructure” at the beginning of the definition and incorporating the statement “Nature-based approaches include green infrastructure practices, as well as restoration approaches such as the restoration of wetland and floodplain hydrology and other river processes” into the definition while also revising

the language regarding maintenance to state such approaches can be self-sustaining or need ongoing maintenance.

FEMA Response: While FEMA appreciates the commenters’ concerns to include restoration or conservation of naturally occurring systems and processes and concerns related to green infrastructure, FEMA’s definitions are consistent with the glossary definition in the Revised Guidelines and the changes proposed by the commenters could result in inconsistencies including inconsistent implementation across other Federal agencies. As explained above, the Revised Guidelines help ensure key terminology is consistent across Federal agencies implementing FFRMS. The Revised Guidelines state that nature-based approaches can restore natural processes, and FEMA does not believe the definition excludes restoring or conserving natural systems. FEMA will provide additional resources with additional examples of nature-based approaches including more information on green infrastructure to address the commenters’ concerns. FEMA will also coordinate with other Federal agencies regarding the use of nature-based solutions as part of the FFRMS implementation.

FEMA appreciates the commenter’s suggestion to specifically reference “the restoration of wetland and floodplain hydrology and other river processes” in the definition of “nature-based approaches,” but disagrees that such an edit is needed to the definition to address the commenter’s concerns.

FEMA’s longstanding requirements in 44 CFR 9.11 outline the agency’s requirements to restore and preserve the natural and beneficial values served by floodplains and wetlands. This requirement to restore and preserve the values served by floodplains and wetlands, *see, e.g.*, 44 CFR 9.11(b)(3) & (e), applies to all actions located within a floodplain or wetland or that affect a floodplain or wetland, including actions that use nature-based approaches.

As explained above, the use of “maintenance” is to differentiate between nature-based approaches and natural features and FEMA does not believe the changes suggested by the commenter are appropriate. Nature-based approaches are designed to mimic natural processes, but they are not wholly naturally occurring. As such, they may require some form of maintenance to ensure they are performing as intended. In comparison, natural features are those characteristics of the environment that are naturally occurring and exist in a dynamic

¹²⁹ Revised Guidelines at pg. 13.

equilibrium, so should require little to no maintenance in serving their purpose. FEMA understands the commenter's concern that "green infrastructure" is more expansive than stated in the NPRM and plans to provide additional resources that will incorporate examples to address some of the specific scenarios raised by the commenter. FEMA notes the definition of "nature-based approaches" states that nature-based approaches are sometimes referred to as "green infrastructure" and the proposed changes merely restate language already incorporated into the definition.

Comment: One commenter restated concerns from a 2016 NPRM comment that the current definition listed "green roofs" or "downspout disconnection" as examples of nature-based approaches, and recommended FEMA provide more applicable examples of nature-based approaches, including "property acquisitions and relocations;" "dam removal;" "levee notching, setbacks, or removal;" and "stream crossing upgrades." The commenter also recommended FEMA expand the definition of nature-based approaches to encompass the restoration and conservation of natural features, providing added emphasis on the use of actions to bolster natural flood risk and water quality management services.

FEMA Response: FEMA's definition of "nature-based approaches" in the final rule, like the definition in the NPRM, does not contain "green roofs" or "downspout disconnection." FEMA's definition is consistent with the Revised Guidelines glossary definition and, as explained above, the changes proposed by the commenter could result in inconsistencies including inconsistent implementation across other Federal agencies. While FEMA appreciates the commenters' concerns to include restoration or conservation of naturally occurring systems and processes and concerns related to green infrastructure, the Revised Guidelines help ensure key terminology is consistent across Federal agencies implementing FFRMS. Although the Revised Guidelines state that nature-based approaches can restore natural processes, FEMA does not believe the definition excludes either protecting or restoring natural processes.

FEMA referred to green roofs and downspout disconnection in the preamble to the NPRM as potential examples of green infrastructure, but not as part of the proposed regulatory definition. See 88 FR at 67890. As part of implementing this final rule, FEMA will provide additional resources with additional examples to address the

commenter's concerns as explained above.

Comment: One commenter asked how FEMA defines natural systems and ecosystem processes.

FEMA Response: FEMA defined "nature-based approaches" and "natural features" in proposed § 9.4. FEMA believes those definitions are sufficient and the terms the commenter used are generally accepted terms found in Executive Order 11988, as amended, that do not require additional definition in this final rule.

8. Natural and Beneficial Values of Floodplains and Wetlands and Natural Features

FEMA received three comments on the definitions of "natural and beneficial values of floodplains and wetlands" and "natural features."

Comment: One commenter requested FEMA incorporate more explicit references to biodiversity, ecosystem functioning, and natural values into the regulation and requested "habitat connectivity" be added to the definition of "natural and beneficial values of floodplains and wetlands" as an example under "Living Resource Values."

FEMA Response: FEMA respectfully declines the commenter's request, as the agency believes the concept habitat connectivity is adequately addressed under Living Resource Values through the changes made in this final rule. Specifically, the final rule describes Living Resource Values as "providing habitats and enhancing biodiversity for fish, wildlife, and plant resources." This language adequately encompasses habitat connectivity, and no edits are required to the final rule.

Comment: A commenter requested FEMA include "functions" in addition to values when referring to protecting or restoring floodplains and wetlands to read "the beneficial functions and values of floodplains and wetlands."

FEMA Response: FEMA's definition of "natural and beneficial values of floodplains and wetlands" incorporates functions and FEMA does not believe additional edits are required.

Comment: One commenter supported the changes proposed to the definitions of "natural and beneficial values of floodplains and wetlands," and "wetlands" and additional definitions for "nature-based approaches" and "natural features" and requested FEMA develop post-regulatory guidance on functional floodplains and wetlands and nature-based solutions.

FEMA Response: FEMA agrees the changes to the definitions of "natural and beneficial values of floodplains and

wetlands" and "wetlands" and the addition of definitions for "nature-based approaches" and "natural features" are helpful features of the rule. FEMA will distribute additional resources to SLTT partners and the public identifying what the FFRMS is, and how the agency will further implement the Executive Orders and part 9.

9. New Construction

Comment: One commenter recommended the definition of "new construction" include "allowed new construction" associated with systems that must be located in the floodplain for supplementing water supply. The commenter requested the rule require consideration of specific stormwater runoff requirements for construction that must be completed in the floodplain and that FEMA recognize managed aquifer recharge (MAR)-related activities might be subject to other State and/or Federal regulation.

FEMA Response: The definition of "new construction" in part 9 must be broad in nature to support the various types of projects and activities FEMA may perform or fund. FEMA specifically incorporated examples in the definition of "new construction" to relate to typical FEMA actions, but those examples are not exhaustive. Under the 8-step decision-making process, FEMA identifies and evaluates practicable alternatives. If there is no practicable alternative outside of the floodplain, such as for functionally dependent uses,¹³⁰ the action may be carried out in the floodplain. The types of actions described by the commenter (managed aquifer recharge floodwater storage retention, spillways, injection wells and other built systems that must be located in the floodplain for their intended purpose of supplementing water supply), would be determined to be functionally dependent uses with likely no alternative outside of the floodplain. FEMA believes no changes are required to the regulation language, as those types of actions would be allowable subject to the application of the FFRMS and the minimization requirements outlined in 44 CFR 9.11. FEMA notes some agency actions will also be subject to other Federal, State, Tribal, territorial, and/or local requirements and FEMA addresses this issue in the FFRMS policy.

¹³⁰ Functionally dependent use means those actions which cannot perform their intended function unless they are located in or in close proximity to water. See 44 CFR 9.4.

10. Practicable

Comments: Two commenters were supportive of the definition of “practicable.”

FEMA Response: FEMA agrees with the commenters that the updated definition of “practicable” in § 9.4 ensures nature-based approaches are considered as practicable alternatives consistent with Executive Order 11988, as amended.

Comment: One commenter stated the definition of “practicable” was extremely vague and might not provide sufficient guidance to ensure meaningful comparison of alternatives. Recognizing the agency’s need for a broad definition to account for differences in situations, the commenter noted the definition did not provide much guidance to determine what is truly “practicable,” as opposed to merely expedient. The commenter requested FEMA require consideration of long-term environmental, community, and economic benefits and costs of an alternative, to ensure practicability determinations were not skewed towards grey infrastructure or in-floodplain actions. The commenter wrote those actions appeared cheaper or more convenient in the short-term but carried greater long-term adverse effects, risks, and/or costs.

FEMA Response: FEMA did not make significant changes to the definition of “practicable.” The changes made in the NPRM and finalized in this rule add an agency authorities factor to clarify the agency’s statutory and regulatory authorities may also limit FEMA’s actions. These changes also updated the factors for consistency with the Revised Guidelines. FEMA does not believe additional changes are required to the definition of “practicable” as the factors listed are not all inclusive. The regulatory text in § 9.9 also provides examples and FEMA will provide additional examples in resources to SLTTs and the public to further clarify as appropriate.

11. Restore

Comment: One comment requested the agency provide examples of what “natural functions” of the floodplain means and specifically include “wildlife habitat and connectivity, carbon sequestration, and water quality improvement.”

FEMA Response: FEMA’s definition of “restore” in § 9.4 does not require the revisions requested. FEMA’s definition of the “natural and beneficial values of floodplains and wetlands” provides examples of what natural functions of the floodplain mean and additional

edits are not required to address the commenter’s concerns. Specifically, the definition provides some examples but is not all inclusive. FEMA can provide additional examples in resources to SLTTs and the public to further clarify as appropriate.

12. Structures and Facilities

Comment: One commenter recommended linear transportation structures not fall under the definition of “structures.”

FEMA Response: FEMA defines both “structures” and “facilities” in § 9.4 and the agency believes these definitions are sufficiently clear. In the FFRMS policy, FEMA addresses both structures and facilities and how the agency will apply FFRMS to each. See section G of the FFRMS policy for more guidance on facilities. FEMA edited the FFRMS Policy accompanying this final rule to further clarify that section G.2 applies to “facilities.” Linear transportation structures fall under the definition of “facilities” for purposes of this part.

13. Wetlands

While one commenter wrote in support of the revised definition of “wetlands,” three other commenters requested revision to the definition.

Comment: One commenter stated the use of the United States Fish and Wildlife Service (USFWS) ’s wetlands definition was problematic, stating in their experience, USFWS declined to engage on projects unless the projects involved species protected by the Endangered Species Act (ESA) and their habitat. The commenter noted water projects and developments involve regulation by the U.S. Army Corps of Engineers (USACE) more often than with USFWS, and recommended FEMA revise the definition of “wetlands” to use the USACE’s long-standing wetland definition.

FEMA Response: FEMA appreciates the commenter’s suggestion and declines to change the definition as the agency believes the reference to USFWS is more appropriate than to USACE’s definition. FEMA’s definition is consistent with the definition of “wetlands” in Executive Order 11990 and the agency is implementing that Executive Order with this regulation. FEMA believes changes to this definition may result in conflating the implementation of Executive Order 11990 with the Clean Water Act. While the commenter is correct that the USACE definition focuses on flood attenuation or mitigation, FEMA’s part 9 implementation goes beyond those considerations for wetlands. FEMA also notes the agency performs Section 7

consultation with USFWS under ESA for actions that affect protected species or critical habitat.

Comment: One commenter recommended FEMA retain the reference to the specific publication provided in the definition of “wetlands.” The commenter stated the publication provided extensive examples and further clarification of what should be considered wetlands and was still used in the definition by the USFWS. The commenter requested the definition be updated to the correct year of publication in the final rule.

FEMA Response: FEMA’s definition is consistent with the definition of “wetlands” in Executive Order 11990, and the agency is implementing that Executive Order with this regulation. FEMA believes deleting the reference to a specific publication in the regulations will not result in a less specific definition as the commenter states. Eliminating references to specific publications helps reduce the potential for the regulations to be outdated if the publication is updated or replaced. As the commenter pointed out, the current regulatory text does not reference the correct year of the publication and the final rule will eliminate confusion around this point. FEMA still anticipates remaining consistent with the USFWS definition for purposes of part 9.

Comment: One commenter recommended the final rule specify whether artificially induced and/or isolated wetlands were included and add clearer agency expectations for subsections under the agency’s FFRMS policy, particularly those involving wetlands.

FEMA Response: FEMA has not changed how the 8-step process applies to wetlands and does not intend to as part of FFRMS implementation in this rulemaking. FEMA’s definition is consistent with the definition of “wetlands” in Executive Order 11990 and the agency is implementing that Executive Order with this regulation. FEMA believes the commenter is conflating the implementation of Executive Order 11990 with the Clean Water Act and FEMA’s part 9 implementation goes beyond those considerations for wetlands.

14. Additional Definitions Requested

In addition to the new and revised definitions provided in the NPRM, commenters requested FEMA add definitions to the final rule.

Comment: One commenter stated the need for clearer definitions was paramount to avoiding ambiguity and ensuring a shared understanding of key

terms. The commenter referenced the Climate-Informed Science Approach (CISA) as a term lacking a definition in the rule as an example of the need for more clarity.

FEMA Response: FEMA appreciates the commenter's concerns but changes to the final rule are not required to resolve those concerns. FEMA's explanation of the Climate-Informed Science Approach is consistent with Executive Order 11988, as amended, and the Revised Guidelines. Rather than providing specific definitions in regulatory text, FEMA describes each approach in § 9.7(c) and in the FFRMS policy. FEMA believes these explanations are sufficiently clear and, because they are consistent with the Executive Order and Revised Guidelines, will not result in ambiguity.

Comment: One commenter recommended adding a definition of "development" for consistency with the NFIP at 44 CFR part 59. The commenter also recommended adding a definition of "non-critical actions" to help define structures and facilities that clearly do not fall under the critical action standard and reduce misunderstandings.

FEMA Response: FEMA defines "support of floodplain and wetland development" in § 9.4 and a definition of "development" is incorporated into that definition. In the FFRMS policy, FEMA clarifies what constitutes a non-critical action as any activity that does not meet the definition of critical action. FEMA does not believe a specific definition in the regulatory text is necessary given the definition of "critical action" already provided in § 9.4.

F. FFRMS Applicability

Commenters requested clarification on the applicability of FFRMS generally as well as to specific types of actions.

1. Generally

Comments: Two commenters sought clarification on the Federal actions that are subject to FFRMS. Both commenters stated that the term "action subject to the FFRMS" could cause misinterpretation or confusion among different Federal agencies implementing the FFRMS. Another commenter asked whether the regulation and FFRMS policy would affect only new construction funded by FEMA. The commenter recommended a clarification to help States understand where FEMA's regulations implementing the FFRMS apply and whether FFRMS applied to State DOT projects funded through FHWA. The commenter also recommended FEMA clarify how the

FFRMS applied to FEMA-funded, non-FEMA but still Federally-funded, and State-funded activities.

FEMA Response: FEMA defines "action subject to the FFRMS" as "any action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility," consistent with Executive Order 11988, as amended, and the Revised Guidelines. FEMA believes this definition is sufficiently clear. As explained in the preamble to the NPRM, 44 CFR part 9 applies to FEMA actions. As explained above, the requirements of this rule apply to grants funding the new construction, substantial improvement, or repair of substantial damage under FEMA programs such as IA, PA, and HMA programs, and grants processed by FEMA's GPD (involving grants for preparedness activities). All Federal agencies will utilize the Revised Guidelines for their own FFRMS implementation. Roads that are under the jurisdiction of another Federal agency, such as those under the FHWA, are subject to that agency's requirements as they generally are ineligible for funding under FEMA's grant assistance programs.

As explained in § 9.5(a)(3), FEMA will apply FFRMS only to new actions for which assistance is made available pursuant to declarations under the Stafford Act that are commenced on or after the effective date of the final rule, and new actions for which assistance is made available pursuant to notices of funding opportunity that publish on or after the effective date of the final rule. Ongoing projects will not be impacted by this final rule.¹³¹

Comment: A commenter requested FEMA clearly define how Federally funded expansions, renovations, rebuild, rehabilitations and similar activities would be impacted by the FFRMS. The commenter noted many infrastructure projects are not static

¹³¹ Note that FEMA first partially implemented the FFRMS by policy with respect to covered projects in existing floodplains in its Public Assistance and Hazard Mitigation Assistance programs. See FEMA Policy 104-22-003, "Partial Implementation of the Federal Flood Risk Management Standard for Public Assistance (Interim)," June 3, 2022 found at https://www.fema.gov/sites/default/files/documents/fema_fp-104-22-0003-partial-implemetnation-ffrms-pa-interim.pdf (last accessed Jan. 24, 2024) and FEMA Policy 206-21-003-0001, "Partial Implementation of the Federal Flood Risk Management Standard for Hazard Mitigation Assistance Program," Dec. 7, 2022 found at https://www.fema.gov/sites/default/files/documents/fema_policy-fp-206-21-003-0001-implementation-ffrms-hma-program_122022.pdf (last accessed Jan. 24, 2024). Some current FEMA actions may be subject to these partial implementation policies; however, those actions would not be subject to this final rule or policy.

structures, but rather periodically require rehabilitation, renovation, and/or expansion and thus would include a combination of rehabilitation of existing construction, modification of existing infrastructure, and entirely new infrastructure elements that would be combined during a project to create the "new" final structure and/or system. The commenter stated that FFRMS seemed to apply only to new structures that can be sited or elevated without moving or damaging existing construction and requested confirmation of that understanding. Another commenter commended FEMA's proposed policy provisions for identifying actions that might be subject to determinations of substantial damage or substantial improvement.

FEMA Response: Part 9 does not apply only to new structures, and FEMA believes the rule and FFRMS policy are sufficiently clear on this point. As stated above, FEMA defines "action subject to the FFRMS" as "any action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility," consistent with Executive Order 11988, as amended, and the Revised Guidelines.

In § 9.4, FEMA defines "new construction" in this final rule as "the construction of a new structure or facility or the replacement of a structure or facility which has been totally destroyed. New construction includes permanent installation of temporary housing units because even though such housing may initially have been planned to be temporary, when it is permanently installed, it becomes a permanent housing solution for survivors. New construction in wetlands includes draining, dredging, channelizing, filling, diking, impounding, and related activities." Also in § 9.4, FEMA further defines "substantial improvement" as any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the pre-disaster market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Stafford Act) (1) before the repair or improvement is started, or (2) if the structure or facility has been damaged and is proposed to be restored. Substantial improvement includes work to address substantial damage to a structure or facility. As it related to the commenter's stated concern, if a facility is an essential link in a larger system, the percentage of damage will be based on the cost of repairing the damaged facility relative to

the replacement cost of the portion of the system which is operationally dependent on the facility. The term “substantial improvement” does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places. Where an action falls under one of the definitions above, it would be considered an action subject to FFRMS.

The revisions to part 9 do not change FEMA’s long-standing requirement as part of implementing Executive Order 11988, as amended, to only perform or fund actions within or affecting floodplains if those actions are the only practicable alternative. Through the 8-step process, FEMA considers alternative locations, alternative actions, nature-based solutions, and the no action alternative under the practicability analysis. If there is no practicable alternative, FEMA will perform or fund the action and will minimize any adverse impacts when doing so.

2. FEMA Specific Programs

Commenters also commented on the applicability of FFRMS to specific FEMA programs.

Comments: Some commenters stated support for FEMA’s policy regarding FFRMS applicability to temporary and permanent housing. One commenter requested FEMA give careful consideration to potentially unintended consequences of greatly expanded requirements for victims of a catastrophic disaster in need of emergency federal disaster assistance. The commenter cited a study related to the impacts of Hurricane Ian and discussed how the flood extent in many areas was approximated by the Special Flood Hazard Area (SFHA) boundaries, noting without constraints in development in the SFHA, flood damages for the area studied would have skyrocketed. Another commenter expressed concern that the proposed rule could increase local costs and delay affordable housing projects. The commenter requested FEMA consider ways to advance affordable housing projects, such as through expansion of its “Housing Mitigation Assistance” grants and requested the agency make accommodations for such projects to support a more expeditious regulatory process.

FEMA Response: FEMA appreciates the commenter’s interest in the agency’s Individuals and Households Program. FEMA’s revisions in § 9.13 reflect the agency’s consideration of the need for disaster survivors to quickly recover, while also addressing the need for more

resilient housing. FEMA notes this rulemaking will not expand the SFHA for NFIP purposes nor does it apply to a local community’s permitting processes under the NFIP’s floodplain management regulations. Those regulations are found at 44 CFR part 59 *et seq.* FEMA notes the agency does not have “Housing Mitigation Assistance” grants, but where FEMA provides funding for housing, the agency will consider social concerns and economic aspects as part of the practicability analysis in the 8-step process.

Comments: Multiple commenters referenced the NFIP and FFRMS applicability. One commenter stated that FEMA only applies the 8-step process programmatically to the NFIP as a whole. The commenter further noted the FFRMS would only apply to new construction or substantial improvement to existing structures or facilities that receive FEMA funding. The commenter stated support for exempting all privately funded activities from the FFRMS as those activities were beyond the scope of FEMA’s authority and would create challenges in determining the geographic scope of the FFRMS defined floodplain and increased construction costs that would negatively impact housing affordability.

Another commenter wrote asking if the FFRMS policy would impact where new flood insurance policies could be issued. The commenter recommended FEMA consider coordinating with other Federal agencies and expanding the Coastal Barrier Resources Act (CBRA) and/or identifying additional areas where new flood insurance policies could not be issued based on FFRMS approaches.

A third commenter wrote the work needed to restore floodplain connectivity should have a streamlined regulatory process and additional financial and technical support to meet regulatory burdens. The commenter stated a fundamental tenet of the NFIP was to discourage increases in base flood elevation from “traditional development,” whereas floodplain restoration projects are intended to increase the base flood elevation in areas where it is safe and socially acceptable to do so. The commenter stated floodplain restoration work was urgently needed in many flood-prone areas, but the NFIP requirements hindered federal investments in floodplain restoration work. The commenter stated that regulatory reforms are needed to ensure Federal restoration dollars could be leveraged to help reduce flood risks and damages.

FEMA Response: FEMA agrees with the commenter that privately funded

activities are not subject to this rule. This rulemaking is not regulating privately funded action; instead, this rulemaking applies to actions subject to the FFRMS, *i.e.*, Federally funded projects for new construction, substantial improvement, and repairs to address substantial damage. For the purposes of regulating private activities, the NFIP’s floodplain management standards will continue to generally apply in NFIP participating communities.¹³² The commenter is also correct that FEMA applies part 9 programmatically to the NFIP.¹³³ Notwithstanding the programmatic application of part 9 to the NFIP, the expanded floodplain established under this rule has no impact on where new flood insurance policies may be issued (including community eligibility for the NFIP participation and individual premiums) because the expanded floodplain only applies to actions subject to the FFRMS.

In short, part 9 does not apply to the issuance of flood insurance policies. This rule and accompanying policy will have no effect on where new flood insurance policies may be issued. FEMA notes that only Congress can expand CBRA, and USFWS has primary authority for the implementation of CBRA. While FEMA appreciates the commenter’s concerns regarding floodplain restoration, regulatory reforms to the NFIP suggested by the commenter are beyond the scope of this rulemaking.

3. Facilities

Four commenters had questions regarding the applicability of the final rule and FFRMS policy to facilities.

Comment: A commenter recommended FEMA clarify special considerations for infrastructure projects by providing more information and guidance on how to implement FFRMS for “facilities.” The commenter stated essential facilities like roadways, bridges, and utilities might be vulnerable to flood damage and required even more attention, but the rule was largely silent as to how FFRMS applied to these projects.

The same commenter wrote of their experience with agencies struggling to adequately assess relevant flood risks when evaluating vital facilities and

¹³² The NFIP’s floodplain management standards are generally found at 44 CFR 60.3. There are variances and exceptions from the standards written into 60.3. Additionally, some communities have higher standards above the NFIP’s floodplain management minimum requirements.

¹³³ A comprehensive list of FEMA programs to which Part 9 does not apply appears at 44 CFR 9.5. The exemption for actions under the NFIP is located at 44 CFR 9.5(f).

recommended incorporating language into Steps 1 and 5 of the 8-step process, clarifying appropriate considerations and methods to apply the FFRMS to facilities. The commenter requested FEMA set forth factors to consider when defining the FFRMS floodplain for facilities (such as considering a larger project area and vulnerability of nearby assets that could be affected) to encourage better, more informed decisions. The commenter also recommended FEMA revise § 9.11 to clarify that although elevation is not universally required for facilities, mitigation measures for facilities subject to the FFRMS must be designed to be resilient to the FFRMS flood elevation.

Another commenter encouraged FEMA to provide more information and guidance in the final rule on implementing the FFRMS for facilities. The commenter stated that most facilities would likely require different implementation considerations and standards than those defined in the rule for structures. The commenter stated that elevation may not be an appropriate means to improve or achieve resilience for facilities and requested that the final rule and related guidance provide variables to consider, which could help define appropriate resilience measures in addition to or in place of elevation.

FEMA Response: FEMA appreciates the commenter's references to challenges with assessing relevant flood risks for vital facilities and infrastructure. As the commenter notes, several factors must be considered when implementing the FFRMS for facilities. FEMA believes that the agency's 8-step process and implementing policy account for the specific concerns raised in the examples provided. The agency's policy reflects a preference for using the CISA that considers sea level rise and FEMA's practicability analysis incorporates social concerns and economic aspects into the 8-step process. FEMA's revisions to part 9 reflect consideration of the type and criticality of the action involved, the availability and actionability of the data, and equity concerns in the implementation of Executive Order 11988, as amended. FEMA also has an agency-wide initiative focused on reducing barriers and increasing opportunities so that all people, including those from vulnerable and underserved communities, can get help when they need it.¹³⁴ Additionally, FEMA reviews all proposed FEMA-funded actions for potential

disproportionate and adverse human health and environmental effects on communities with environmental justice concerns using a standardized environmental justice compliance review process.

For the reasons described below, FEMA's current proposed FFRMS policy uses the FFRMS flood elevation and corresponding floodplain to establish the minimum level to which a structure or facility must be resilient. For facility projects that are subject to the FFRMS, the FFRMS flood elevation represents the magnitude of flooding that must be considered in incorporating flood resilient design features into project designs. This approach allows the FFRMS to be integrated as one element of project-specific comprehensive design methods and leaves open the possibility of more prescriptive design requirements as infrastructure design methods improve, better incorporating consideration of continually changing hazard conditions.

Due to the vast diversity of facilities, the highly project-specific nature of facilities projects, and numerous options for making them resilient, infrastructure standards (in terms of narrowly scoped specifications) to reduce risk from climate change and future conditions currently do not exist on a national level. This lack of established standards, and the long timeline necessary to develop them, requires consideration of less prescriptive approaches. In the absence of such standards, Federal agencies that oversee construction of infrastructure projects such as the FHWA and USACE apply project-specific risk assessment and adaptive management approaches, which generally require data collection, detailed studies, benefit-cost analyses, and consideration of various alternatives, adaptation, and mitigation measures.¹³⁵

¹³⁵ See, e.g., Federal Highway Administration Hydraulic Engineering Circular No. 17, 2nd Ed: Highways in the River Environment—Floodplains, Extreme Events, Risk, and Resilience 2016, available at https://www.fhwa.dot.gov/engineering/hydraulics/library_arc.cfm?pub_number=2&id=162 (last accessed Jan. 24, 2024), Federal Highway Administration Hydraulic Engineering Circular No. 25, 2nd Ed: Highways in the Coastal Environment October 2014, available at <https://www.fhwa.dot.gov/engineering/hydraulics/pubs/nhi14006/nhi14006.pdf> (last accessed March 28, 2024), US Army Corps of Engineers Engineering and Construction Bulletin 2018-14: Guidance for Incorporating Climate Change Impacts to Inland Hydrology in Civil Works Studies, Designs, and Projects, available at <https://wbdg.org/ffc/dod/engineering-and-construction-bulletins-ecb/usace-ecb-2018-14> (last accessed Jan. 24, 2024), and US Army Corps of Engineers Engineer Regulation No. 1100-2-8162: Incorporating Sea Level Change in Civil Works Programs, June 2019, available at [FEMA already incorporates many of these approaches into its grant requirements. FEMA Recovery Interim Policy 104-009-11 Version 2.0, "Consensus-Based Codes, Specifications and Standards for Public Assistance" \(December 20, 2019\) requires "application of the latest nationwide consensus-based codes, specifications and standards that incorporate hazard resistance for PA funded projects," including buildings, electric power, roads, bridges, potable water, and wastewater.¹³⁶ Appendix A of the policy includes an extensive list of risk assessment and adaptive management methods which applicants are required to use "as the minimum design criteria for eligible projects." Eligibility for Hazard Mitigation Assistance funding requires SLTT partners to have up-to-date hazard mitigation plans, which incorporate community-wide risk assessment and adaptive management approaches applicable to facilities or linear infrastructure.](https://www.publications.usace.army.mil/USACE-</p>
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Further, FEMA does not believe changes to the final rule are required as the regulation applies the 8-step process to any action, as defined in 44 CFR 9.4, which includes facilities. In the 8-step process, FEMA considers not just whether proposed actions would be in a floodplain or wetland, but also whether the proposed action would affect a floodplain or wetland. FEMA has routinely applied Steps 1 and 5 to facilities. FEMA also applies Step 4, which identifies impacts of a proposed action at and beyond the proposed action location. FEMA will distribute additional resources for the public and SLTT partners to help identify what the FFRMS is, and how the agency will implement the Executive Orders. These resources will help applicants better understand the FFRMS as they apply for FEMA programs.

Section G.2. of FEMA's FFRMS policy discusses flood risk minimization for facilities. FEMA's FFRMS policy uses the FFRMS flood elevation and corresponding floodplain to establish the minimum level to which a structure or facility must be resilient. For facilities projects that are subject to the FFRMS, the FFRMS flood elevation represents the magnitude of flooding that must be considered in incorporating flood resilient design features into facility project designs.

[Publications/Engineer-Regulations/udt_43546_param_orderby/Pub_x0020_Number/udt_43546_param_direction/descending/?udt_43546_param_page=3](https://www.fema.gov/sites/default/files/2020-05/DRRA1235b_Consensus_BasedCodes_Specifications_and_Standards_for_Public_Assistance122019.pdf) (last accessed Jan. 24, 2024).

¹³⁶ https://www.fema.gov/sites/default/files/2020-05/DRRA1235b_Consensus_BasedCodes_Specifications_and_Standards_for_Public_Assistance122019.pdf (last accessed Apr. 2, 2024).

¹³⁴ See <https://www.fema.gov/emergency-managers/national-preparedness/equity> (last accessed Jan. 24, 2024).

This approach allows the FFRMS to be integrated as one element of project-specific comprehensive design methods, and leaves open the possibility of more prescriptive design requirements as infrastructure design methods improve, better incorporating consideration of continually changing hazard conditions.

FEMA further believes that revising the text of § 9.11 to clarify that mitigation measures for facilities subject to FFRMS must be designed to be resilient to the FFRMS flood elevation, as the commenter requested, is not necessary. As the commenter noted, this point is made in the FFRMS policy, and FEMA does not believe changes to the regulatory text are required to achieve the FFRMS resilience.

Comment: One commenter raised several questions regarding FFRMS implementation and facilities. The commenter stated that building transportation infrastructure to survive extreme events is a good investment, but the FFRMS is overly conservative and based on risk of low probability. The commenter asked about the applicability of part 9 and the FFRMS to a range of potential actions from linear transportation structures to roadways, bridges, and culverts and raised concerns with how FFRMS application to these types of actions might raise conflicts with other Federal, State, or local agencies. The commenter also stated concerns about elevating facilities and provided an example of where the FFRMS would elevate a bridge to a height greater than the flood-prone height of the connecting roads. The commenter recommended FEMA clarify roadways and associated bridges and culverts were not required to perform an alternatives analysis for their location in a floodplain.

FEMA Response: FEMA appreciates the commenter's concerns regarding the applicability of FFRMS and part 9 to specific infrastructure projects. FEMA defines both "structures" and "facilities" in § 9.4 and the agency believes these definitions are sufficiently clear to explain FFRMS and part 9 applicability to specific actions. Executive Order, 11988, as amended, requires both structures and facilities be resilient against current and future flood hazards. FEMA believes that, as described by the commenter, roadways, bridges, culverts, and linear transportation structures would fall under the definition of "facilities" for this part and thus would not necessarily be exempt from part 9.

As explained above, FEMA defines "action subject to the FFRMS" as "any action where FEMA funds are used for new construction, substantial

improvement, or to address substantial damage to a structure or facility." The FFRMS applies to grants for projects funding the new construction, substantial improvement, or repair of substantial damage under FEMA programs such as IA, PA, and HMA programs, and grants processed by FEMA's GPD. FEMA does not fund repairs or improvements to Federal-aid roads, and this rulemaking would not be applicable to those roads. Rather, the FHWA regulations would govern those actions. Where FEMA may provide funding, FEMA's FFRMS policy provides details on how FEMA will coordinate with other agencies when implementing actions in the same area as another Federal agency. See FFRMS policy Section H, page 9. When coordinating with other Federal agencies, FEMA generally defaults to the FFRMS policy approach in FEMA's FFRMS policy, as appropriate. Where FEMA provides funding for these activities, FFRMS applies to improve resilience to facilities against both current and future flood risks.

In the FFRMS policy, FEMA addresses both structures and facilities and how the agency will apply FFRMS to each. See section G of the FFRMS policy for more guidance on facilities. Note FEMA edited the FFRMS policy accompanying this final rule to further clarify that section G.2 applies to "facilities," by using the term "Facilities" instead of the term "Non-Structure Facilities."

Further, § 9.11(d)(6) states when FEMA is providing funding, a more restrictive Federal, State, or local floodplain management standard will be applied. Section G.2 of FEMA's FFRMS policy further discusses flood risk minimization for facilities and clarifies that FEMA would also allow methods other than elevation to be used to improve resilience against flooding up to the flood elevation of the FFRMS floodplain in conjunction with any other applicable codes and standards.¹³⁷

FEMA's FFRMS policy uses the FFRMS flood elevation and corresponding floodplain to establish the minimum level to which a structure or facility must be resilient. The minimization requirements are similar to how FEMA currently implements

¹³⁷ See FFRMS Policy, pg. 8, "Particularly in cases where elevation may not be feasible or appropriate for non-structure facilities, the FFRMS floodplain, determined according to the process described in section C of this policy, establishes the level to which a structure or facility must be resilient. Resilience measures include using structural or nonstructural methods to reduce or prevent damage; elevating a structure; or, where appropriate, designing it to adapt to, withstand and rapidly recover from a flood event."

part 9 for the 1 percent and 0.2 percent annual chance floods. For facility projects that are subject to the FFRMS, the FFRMS flood elevation represents the magnitude of flooding that must be considered in incorporating flood resilient design features into facility project designs. This approach allows the FFRMS to be integrated as one element of project-specific comprehensive design methods and leaves open the possibility of more prescriptive design requirements as infrastructure design methods improve, better incorporating consideration of continually changing hazard conditions. Further, as explained above, FEMA already incorporates FHWA Hydraulic Engineering Circulars 17 and 25 (*Highways in the River Environment* and *Highways in the Coastal Environment*) into its Public Assistance grant requirements.

To address the commenter's concerns regarding overly conservative methods, FEMA notes the FFRMS is a flexible framework to define the floodplain that allows agencies to choose among several approaches to expand the base floodplain to a higher vertical elevation and corresponding horizontal extent for all Federally funded projects. FEMA's FFRMS policy is not a one-size-fits-all approach. Rather, FEMA's policy approach is flexible to address criticality of the action being taken, data availability based on the location of the action, and equity concerns.

Finally, the final rule does not change many of the current requirements for proposed actions. Proposed actions involving roadways, bridges, and culverts located in or impacting floodplains and wetlands continue to be subject to alternatives analysis under Executive Order 11988, as amended, and part 9. For certain small-scale actions under FEMA's PA program, the proposed rule increases the dollar value thresholds for projects that are exempt from the 8-step process or that are subject to an abbreviated 8-step review.

Comment: The same commenter stated that enhancing resilience should be the responsibility of the States to enable community-specific strategies. The commenter requested clarification on whether States and localities could use Federal funds for resilience measures, such as raising or widening roadways and bridges to meet the increased vertical elevation and expanded horizontal floodplain while still qualifying for FEMA funding. The commenter further stated the FFRMS would remove risk to structures from risk-based design criteria some States had in place and would require a one-size-fits-all approach for bridge-sized

structures. The commenter also noted some non-Federal partners might not allow States to select the FFRMS approach. The same commenter stated the FFRMS approaches added an unnecessary factor of safety for proposed actions, as many States would replace a structure multiple times before the CISA floodplains would take place. The commenter stated it was impossible to accurately predict change over long periods of time due to the nature of these systems.

FEMA Response: FEMA agrees that States and localities should lead their own efforts to enhance resilience. FFRMS is required for Federal actions that are subject to the FFRMS to protect against current and future flood risks and help ensure that Federally-funded projects last as long as intended. FEMA's FFRMS policy is not a one-size-fits-all approach. Rather, FEMA's policy approach is flexible to address criticality of the action being taken, data availability based on the location of the action, and equity concerns. Risk is an inherent factor in applying all of the FFRMS approaches. FEMA considers the criticality of the action in determining the level of risk that must be considered in minimizing flood hazards. Critical actions are those actions for which even a slight chance of flooding is too great and would be protected to a higher level under the FFRMS.

FEMA explained above the applicability of the FFRMS and the 8-step process generally to facilities. As noted above, part 9 only applies to FEMA actions. Where FEMA may provide funding, FEMA's FFRMS policy provides details on how FEMA will apply the appropriate FFRMS approach to improve resilience to facilities against both current and future flood risks.

SLTTs can provide input into the determination. Pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be used in lieu of the FFRMS. FEMA values additional input from SLTT partners and the public in the 8-step process. FEMA notes, where the agency provides funding, any increased costs are generally eligible for funding under FEMA's assistance programs subject to cost share requirements.

Regarding the commenter's concerns about replacing a facility or structure several times over a period of time, FEMA's preferred approach (CISA) incorporates service life as part of determining the FFRMS floodplain. FEMA understands the commenter's concerns and will determine the appropriate service life on a case-by-case basis for each action. The FFRMS

Job Aid provides additional information on service life and how FEMA will make those individual determinations.¹³⁸

Comment: The same commenter also wrote by raising the base flood elevation, the FFRMS would make the floodway obsolete and asked if FEMA would stop using floodways to regulate construction, and let local governments decide how much development was acceptable while adhering to the FFRMS. The commenter further recommended "temporary encroachments," such as temporary structures required for bridge construction, be explicitly exempted from the FFRMS.

FEMA Response: FEMA assumes the commenter's reference to the base flood elevation is the base flood elevation established and applicable under the NFIP. This final rule does not raise the base flood elevation under the NFIP. The NFIP is a program through which property owners in participating communities can purchase Federal flood insurance as a protection against flood losses.¹³⁹ As a condition of eligibility, a community must adopt and enforce floodplain management regulations that incorporate NFIP minimum floodplain management criteria developed by the Administrator.¹⁴⁰ Further information regarding FEMA's minimum floodplain management standards for the NFIP can be found at 44 CFR part 59 *et seq.* Any update to those standards would require a rulemaking to revise the appropriate regulatory sections of the CFR. By contrast, the FFRMS as implemented by this rulemaking, only applies to actions where FEMA funds are used for new construction, substantial improvement, or repairs to address substantial damage to structures and facilities.¹⁴¹

As explained above, § 9.4 defines both "floodway" and "regulatory floodway." The definition of "floodway" was not changed with this final rule and the definition of "regulatory floodway" was

further clarified by eliminating the reference to a specific amount set by the NFIP and instead defining the term to mean the area regulated by Federal, State, or local requirements to provide for the discharge of the base flood so that the cumulative rise in water surface is no more than a designated amount above the base flood elevation. These edits more accurately encompass situations where communities have adopted more restrictive floodway definitions than the minimum specified by the NFIP. The changes are intended to help stakeholders better understand what a regulatory floodway is and how it is determined without tying the term to a specific amount that can change under the NFIP.

Regarding temporary encroachments, § 9.5(c)(1) exempts actions under PA category B pursuant to section 403 of the Stafford Act. Those actions may include temporary repairs to structures and facilities. Any temporary work associated with permanent work, however, is generally included in the 8-step analysis for the permanent action.

Comment: A commenter stated the RIA was limited and inadequate and cited several examples of where FEMA should improve the RIA. Specifically, the commenter stated that FEMA attempted to isolate a population of actions where the standards would be applied, limiting the analysis to structures that will be paid for with Federal funds and did not capture the costs and benefits of the regulatory alternatives that would be associated with applying the FFRMS to Federal licenses and permits. The commenter also stated that FEMA did not consider the impacts of the new standards on the floodplain regulations mandated for communities that participate in the NFIP and the economic impacts of applying the new standards to NFIP floodplain mapping and the accreditation of levees under the NFIP. The commenter further stated accreditation was mapping and the scope of 44 CFR part 9 included application of the 8-step process to NFIP mapping.

FEMA Response: FEMA appreciates the commenter's suggestions regarding the RIA but believes the commenter's requests go beyond the scope of this rulemaking. FEMA disagrees with the commenter that the RIA should capture costs and benefits associated with Federal licenses and permits. The changes made to part 9 to implement FFRMS only apply to actions subject to the FFRMS. FEMA defines "action subject to the FFRMS" as "any action where FEMA funds are used for new construction, substantial improvement,

¹³⁸ See FFRMS Job Aid, pg. 14.

¹³⁹ 42 U.S.C. 4011(a).

¹⁴⁰ 42 U.S.C. 4011(a) and (b); 42 U.S.C. 4102; 44 CFR 59.2(b), 59.22(a)(3), 60.1(d).

¹⁴¹ See "Guidelines for Implementing Executive Order 11998, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input," 80 FR 64008 (Oct. 22, 2015) (providing notice of the availability of the Revised Guidelines in the docket for the rulemaking at <https://www.regulations.gov/document/FEMA-2015-0006-0358> (main content) and <https://www.regulations.gov/document/FEMA-2015-0006-0372> (appendices)) also available at https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf (last accessed Mar. 11, 2024).

or to address substantial damage to a structure or facility,” consistent with Executive Order 11988, as amended, and the Revised Guidelines. The FFRMS applies to grants for projects funding the new construction, substantial improvement, or repair of substantial damage under FEMA programs such as IA, PA, and HMA programs, and grants processed by FEMA’s GPD. Accordingly, the scope of FEMA’s regulatory impact analysis is limited to the FEMA projects where the FFRMS standards would be applied.

FEMA further does not believe the agency is required to consider the impacts of the new standards on the floodplain regulations mandated for communities that participate in the NFIP and the economic impacts of applying the new standards to NFIP floodplain mapping and the accreditation of levees under the NFIP. As explained above, the NFIP is a program through which property owners in participating communities can purchase Federal flood insurance as a protection against flood losses. As a condition of eligibility, a community must adopt and enforce floodplain management regulations that incorporate NFIP minimum floodplain management criteria developed by the Administrator. Further information regarding FEMA’s minimum floodplain management standards for the NFIP can be found at 44 CFR part 59 *et seq.* By contrast, the FFRMS as implemented by this rulemaking, only applies to actions where FEMA funds are used for new construction, substantial improvement, or repairs to address substantial damage to structures and facilities.

G. FFRMS Approaches

1. CISA

Several commenters expressed support for the use of the CISA but sought additional clarification on implementation of the approach. A few commenters raised concerns with the use of the CISA.

General Comments

Comment: A commenter stated utilizing the CISA to determine the FFRMS floodplain where possible was of critical importance as CISA offered a forward-thinking approach to improve resilient development considering both current and future flood risk. The commenter noted the necessary data and modeling capabilities underpinning CISA have continued to expand in recent years, making CISA an increasingly practicable methodology for more accurately determining the extent of the FFRMS floodplain.

FEMA Response: FEMA agrees with the commenter that since the introduction of the CISA in 2015, additional data has become available to better inform CISA.¹⁴² FEMA believes data availability and actionability will continue to advance for CISA in the future. Specifically, FEMA expects more data will be developed, supporting broader-based application of CISA as agencies implement the FFRMS, and this data will be considered and incorporated into future updates of the FFRMS and FEMA’s implementation thereof. FEMA’s policy approach is to use CISA where available, recognizing the data is still not available in every location.

Comment: Two commenters wrote the CISA did not promote predictability or reduce uncertainty as required by Executive Orders 12866 and 13563 and instead left the public to guess a standard from a range of possible climate scenarios. The commenters stated questions regarding the flood hazard area and elevation remain unanswered within the CISA and the approach lacked specific criteria for making those determinations. The commenters noted FEMA did not propose to require the use of CISA in the agency’s 2016 NPRM because of the lack of available CISA data and stated those concerns still exist. The commenters further stated that the lack of coherent decision criteria within the CISA raised concerns about the clarity of Congressional authority guiding the standard.

FEMA Response: FEMA disagrees with the commenters that the CISA results in uncertainty for the public as the agency provided information on the CISA with the NPRM. Appendix H of the Revised Guidelines¹⁴³ provides an overview of the available and actionable data for CISA, which is the basis for interagency supporting tools to implement the FFRMS. As explained above, the Science Subgroup convened by the Flood Resilience Interagency Working Group (IWG) of the National

Climate Task Force published the FFRMS CISA State of the Science Report.¹⁴⁴ The FFRMS CISA State of the Science Report refines the initial framework from Appendix H and specifically identifies the latest sea level rise projections from the National Climate Assessment as actionable, stating that each agency should factor projected regional/local sea level change into Federal investment decisions located as far inland as the extent of estimated tidal influence, now and in the future, using the most appropriate methods for the scale and consequence of the decision.¹⁴⁵ This report is the basis of the interagency implementation and supporting tools such as the FFRMS Job Aid.¹⁴⁶ FEMA is relying on these interagency processes to select and evaluate the data and methods used. FEMA published the FFRMS Job Aid and the FFRMS CISA State of the Science Report in the public docket associated with this rulemaking.¹⁴⁷ FEMA also posted the FFRMS Job Aid on its website¹⁴⁸ and currently plans to use the methodology found in the FFRMS Job Aid to determine the FFRMS floodplain as explained above.

FEMA believes the policy approach detailed in the agency’s FFRMS Policy is sufficiently certain for FFRMS implementation. As detailed in the FFRMS Policy, FEMA will use the CISA when such data is available and actionable as further explained in Appendix H of the Revised Guidelines¹⁴⁹ and refined in the FFRMS CISA State of the Science Report.¹⁵⁰ Where the CISA data is not available and/or actionable, the agency will use either the FVA or 0.2PFA depending on the criticality of the action and data availability. Consistent with the

¹⁴⁴ Available at https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed Jan. 24, 2024), <https://www.fema.gov/floodplain-management/intergovernmental/white-house-flood-resilience-interagency-working-group> (last accessed Jan. 24, 2024), and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0007>.

¹⁴⁵ FFRMS CISA State of the Science Report, pp. 23.

¹⁴⁶ See https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024) and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

¹⁴⁷ See <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

¹⁴⁸ See https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024).

¹⁴⁹ Revised Guidelines, pgs. 16–17 and 50–52.

¹⁵⁰ FFRMS CISA State of the Science Report, pgs. 7–8.

¹⁴² See “Federal Flood Risk Management Standard Climate-Informed Science Approach (CISA) State of the Science Report,” available at https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed Jan. 24, 2024), <https://www.fema.gov/floodplain-management/intergovernmental/white-house-flood-resilience-interagency-working-group> (last accessed Jan. 24, 2024), and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0007>.

¹⁴³ Available at https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf (last accessed Jan. 24, 2024).

information in the FFRMS CISA State of the Science Report regarding data availability/actionability,¹⁵¹ FEMA will initially rely on the methodology from the FFRMS Job Aid¹⁵² to make the CISA, FVA, and 0.2PFA determinations.

FEMA understands data availability and actionability is a key factor in completing this analysis in a consistent, equitable manner. As stated above, since the introduction of the CISA in 2015, additional data has become available to better inform CISA.¹⁵³ FEMA believes data availability and actionability will continue to advance for CISA in the future. However, as actionable climate data are currently only available along low-lying coastal shorelines on the Atlantic and Gulf Coasts not subject to runoff or overtopping pursuant to the FFRMS CISA State of the Science Report,¹⁵⁴ FEMA is proposing the FVA and 0.2PFA alternatives in the absence of actionable CISA data. FEMA notes, consistent with current practice, the agency will continue make the floodplain determinations as part of the action taken, reducing the burden on applicants in the process. FEMA estimated the cost for determining the appropriate FFRMS floodplain in the Administrative Cost section within the RIA.

CISA Implementation

Commenters inquired as to how FEMA would implement CISA as part of the agency's FFRMS implementation.

Comment: A commenter requested FEMA amend § 9.7(c)(i)(A) to require an assumption that “climate impacts would be more rather than less severe under conditions of uncertainty.”

FEMA Response: FEMA is not codifying the specific climate scenarios to be used as part of the CISA analysis. As previously explained, FEMA is relying on interagency tools to determine CISA flood elevations and corresponding horizontal floodplains. FEMA will initially implement this final rule using the FFRMS Job Aid that was published in the public docket

associated with this rulemaking along with the proposed rule. The FFRMS Job Aid is also on FEMA's website.¹⁵⁵

Comments: One commenter characterized CISA as a framework built upon continually evolving models, projections, and assumptions regarding climate change and anticipated future conditions. The commenter stated the decision criteria under the CISA approach was not adequately defined in the rule and the information provided about CISA in the rule regarding the best available information remained unspecified, raising concerns about project implementation and general uncertainty. Another commenter recommended that FEMA make clear its ability to update how it implements the FFRMS approaches as necessary according to the latest climate science, rather than going through a rulemaking process for each successive update. The commenter stated that the CISA State of the Science Report provided robust information on CISA implementation but because of its length was not necessarily an easily accessible reference document. The commenter recommended providing succinct and practical guidance on CISA to facilitate implementation of the approach. The comment suggested that such guidance could include a representative list of acceptable data sources and guidance on how to interpret and apply these sources (for instance, how to choose an appropriate timeline or planning scenario).

FEMA Response: FEMA's explanation of the CISA is consistent with Executive Order 11988, as amended, and the Revised Guidelines. FEMA has not provided specific definitions of each approach under FFRMS but rather describes each in § 9.7 and also in the FFRMS policy. FEMA believes these explanations are sufficiently clear and will not result in ambiguity or misunderstanding because they are consistent with the Executive Order and Revised Guidelines.

FEMA further believes the information provided is consistent with Executive Order 11988, as amended; the Revised Guidelines; and the CISA State of the Science report. The information is also sufficient to implement FFRMS and CISA. FEMA will rely on 44 CFR 9.7, FEMA Policy 104–008–2: Guidance on the Use of Available Flood Hazard

Information,¹⁵⁶ the Revised Guidelines, and the FFRMS CISA State of the Science Report in determining whether CISA and flood hazard data is available and actionable. The FFRMS CISA State of the Science Report¹⁵⁷ is the basis of the interagency implementation and supporting tools such as the FFRMS Job Aid.¹⁵⁸ FEMA published the FFRMS Job Aid and the FFRMS CISA State of the Science Report in the public docket associated with this rulemaking.¹⁵⁹ FEMA also posted the FFRMS Job Aid on its website.¹⁶⁰

FEMA intends to leverage the FFRMS Job Aid when implementing FFRMS. FEMA will initially rely on the methodology found in the FFRMS Job Aid for determining the FFRMS floodplain and, as explained elsewhere in our responses, will accept higher standards provided by other Federal, State, or local entities in accordance with 44 CFR 9.11(d)(6) so long as it is as least as restrictive as FEMA's FFRMS floodplain determination and adopted by the community for use, including where communities have adopted local CISA. FEMA will continue to collaborate across the Federal government to develop tools to facilitate the implementation of CISA and the FFRMS. The IWG recently released a beta version of the Federal Flood Standard Support Tool (FFSST), a novel interactive, map-based tool that incorporates new data to help users identify if a Federally funded project is in the FFRMS floodplain, for comment.¹⁶¹ FEMA intends to provide additional resources to assist stakeholders as FFRMS is implemented.

¹⁵⁶ Available at https://www.fema.gov/sites/default/files/2020-04/Available_Flood_Hazard_Information_Policy_104-008-2.pdf (last accessed Mar. 12, 2024). The FFRMS proposed and final policies reference this existing FEMA policy in Section D.1.

¹⁵⁷ Available at https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed Jan. 24, 2024), <https://www.fema.gov/floodplain-management/intergovernmental/white-house-flood-resilience-interagency-working-group> (last accessed Jan. 24, 2024), and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0007>.

¹⁵⁸ See https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024) and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

¹⁵⁹ See <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

¹⁶⁰ See https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024).

¹⁶¹ 89 FR 25674 (Apr. 11, 2024).

¹⁵¹ *Id.*

¹⁵² FFRMS Job Aid, pgs. 7–11 generally.

¹⁵³ See “Federal Flood Risk Management Standard Climate-Informed Science Approach (CISA) State of the Science Report,” available at https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed Jan. 24, 2024), <https://www.fema.gov/floodplain-management/intergovernmental/white-house-flood-resilience-interagency-working-group> (last accessed Jan. 24, 2024), and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0007>.

¹⁵⁴ FFRMS CISA State of the Science Report, pgs. 22–23 and 28.

¹⁵⁵ See https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024) and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

Consistent with Executive Order 11988, as amended, and the Revised Guidelines, CISA requirements will change as the available and actionable data change. The MitFLG in consultation with the Federal Interagency Floodplain Management Task Force (FIFM-TF) will reassess FFRMS annually, after seeking stakeholder input, and provide recommendations to the WRC to update FFRMS, including the FVA, if warranted based on accurate and actionable science that takes into account changes to climate and other changes in flood risk. The WRC shall issue an update to FFRMS at least every 5 years.¹⁶²

Comments: Three commenters requested that FEMA clarify how it will determine that CISA data are available and actionable when determining the FFRMS floodplain. One of the commenters asked whether CISA data availability was dependent on FEMA mapping using CISA data. Another commenter requested clarity on how CISA would be assessed. The commenter noted the CISA data must be “existing” and both “available” and “actionable,” and stated this implied that entities proposing a project were only obligated to rely on information that was already existing, available, and actionable, which was inconsistent with the rest of the rule that focused on creating project-specific assessments.

FEMA Response: Data availability is not dependent on the development of FEMA regulatory mapping products (such as effective Flood Insurance Rate Maps [FIRMs]) utilizing CISA data. The Revised Guidelines require agencies to utilize the “best available and actionable science.” The Revised Guidelines state that in this context, “best-available” generally refers to science, data or information that is:

- Transparent—clearly outlines assumptions, applications, and limitations;
- Technically credible—transparent subject matter or more formal external peer review, as appropriate, of processes and source data;
- Usable—relevance and accessibility of the information to its intended users;
- Legitimate—perceived by stakeholders to conform to recognized principles, rules, or standards. Legitimacy might be achieved by existing government planning processes with the opportunity for public comment and engagement.¹⁶³

The Revised Guidelines further state that actionable science includes theories, data, analyses, models, projections, scenarios and tools that are:

- Relevant to the decision under consideration;
- Reliable in terms of its scientific or engineering basis and appropriate level of peer review;
- Understandable to those making the decision;
- Supportive of decisions across wide spatial, temporal, and organizational ranges, including those of time-sensitive operational and capital investment decision-making;
- Co-produced by scientists, practitioners, and decision-makers, and meet the needs of and are readily accessible by stakeholders.

These concepts of best-available and actionable science are further described in Part II, Step 1 of the Revised Guidelines, in the context of the various approaches for determining a floodplain and in Appendix H of the Revised Guidelines specifically as it relates to the CISA.¹⁶⁴

As previously explained, the FFRMS CISA State of the Science Report¹⁶⁵ contains an up-to-date review and update of the best-available, actionable science that can support application of the CISA, and is the basis of the interagency implementation and supporting tools such as the FFRMS Job Aid.¹⁶⁶ FEMA will initially rely on the methodology in the FFRMS Job Aid to determine the FFRMS floodplain when implementing this final rule.

FEMA disagrees with the commenter that requiring CISA data be available and actionable is inconsistent with the rest of the rule. The 8-step process is action-specific, and the floodplain determination is made based on the location of the action, but the data to determine the floodplain at that location must be available and actionable for CISA to be utilized. FEMA’s FFRMS policy further defines where CISA is applicable.

¹⁶⁴ See Revised Guidelines at pgs. 16–17.

¹⁶⁵ Available at https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed Jan. 24, 2024), <https://www.fema.gov/floodplain-management/intergovernmental/white-house-flood-resilience-interagency-working-group> (last accessed Jan. 24, 2024), and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0007>.

¹⁶⁶ See https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024) and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

Comments: FEMA received comments regarding the service life of proposed actions and how the agency would calculate the service life of actions. One commenter suggested FEMA provide guidelines on how to determine an appropriate period. Another commenter noted FEMA used a default 50-year lifecycle analysis that would not be appropriate for all actions and requested FEMA provide information on how the 50-year lifecycle timeline was determined, as well as guidelines on how to determine the appropriate lifecycle on a case-by-case basis.

FEMA Response: FEMA’s analysis of the rule’s benefits relied upon a report defaulting to a 25-year and 50-year lifecycle for all actions. However, when making floodplain determinations, FEMA intends to determine the appropriate service life on a case-by-case basis for each action. This will ensure that FEMA evaluates floodplain hazards over the appropriate lifecycle for each action. The FFRMS Job Aid provides additional information on service life and how FEMA will make those individual determinations.¹⁶⁷

FEMA’s RIA used the 2022 report titled “A Benefits Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains,” (“2022 report”) in its analysis of benefits. The 2022 report calculated benefits for increased freeboard over 25-year and 50-year useful lives under a variety of climate change scenarios.¹⁶⁸ FEMA’s analysis considered the benefits of the rule assuming a 50-year useful life.

Comment: A commenter stated some states, such as California, had guidelines on sea level rise and those guidelines were inconsistent with the CISA +5 feet option discussed in the rule’s regulatory impact analysis. The commenter stated such an elevation requirement would be overbuilt per those State guidelines. The commenter stated that CISA would be overly conservative for many locations, because of what the commenter characterized as CISA’s one-size-fits-all approach.

FEMA Response: FEMA’s regulatory impact analysis utilizes an assumption of +5 feet for CISA as an analysis point. The +5 feet is an assumption because FEMA does not currently have detailed enough data to estimate the average CISA level within the United States based on currently available CISA data and the additional CISA data that will

¹⁶⁷ See FFRMS Job Aid, pg. 14.

¹⁶⁸ The FEMA BCA Toolkit recommends using a 50-year project useful life for public buildings and a 25-year project useful life for nonresidential buildings.

¹⁶² Section 4, Executive Order 13690, 80 FR 6425 (Feb. 4, 2015).

¹⁶³ See Revised Guidelines at pgs. 16–17.

continue to become available over time. However, CISA is not a one-size-fits-all approach. FEMA notes the FFRMS Floodplain Determination Job Aid indicates the CISA method is recommended for actions along low-lying coastal shorelines on the Atlantic and Gulf Coasts. For Pacific coasts and other coasts with bluffs, FEMA may initially use the FVA approach.

SLTTs can provide input into the determination. Pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be used, including local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data result in a more restrictive standard.

FEMA's FFRMS policy is not a one-size-fits-all approach; rather, the agency's policy approach is flexible to address criticality of the action being taken, data availability based on the location of the action, and equity concerns. FEMA is not codifying the specific climate scenarios to be used as part of the CISA analysis. As previously explained, FEMA is relying on interagency tools to determine CISA flood elevations and corresponding horizontal floodplains. FEMA will initially implement this final rule using the FFRMS Job Aid that published in the public docket associated with this rulemaking along with the proposed rule. The FFRMS Job Aid is also on FEMA's website.¹⁶⁹

Comment: The same commenter stated that when designing bridges and embankments, the CISA approach considers impacts from projected land cover/land use changes, long-term erosion, and other processes that may alter flood hazards over the lifecycle of the Federal investment. The commenter asked how the estimates for long-term erosion and scour would be determined. This commenter further stated the outcomes from these estimates were subject to uncertainty, resulting in overdesign and greatly reducing the likelihood of the CISA data actually occurring.

FEMA Response: FEMA's FFRMS policy provides details on how FEMA will implement FFRMS for facilities. This analysis is completed on a case-by-case basis and may require the services of a professional engineer, as appropriate, consistent with FEMA program requirements. More information on consideration of flood

characteristics such as erosion and scour can be found in the Revised Guidelines.¹⁷⁰

Whether CISA data are available and/or actionable will depend in part upon the location of the action being taken. FEMA believes the policy approach detailed in the agency's FFRMS policy is sufficiently certain for FFRMS implementation. As detailed in the FFRMS policy, FEMA will use the CISA where such data is available and actionable. FEMA is relying on interagency tools to determine CISA flood elevations and corresponding horizontal floodplains. Where the CISA data are not available and actionable, the agency will leverage either the FVA or 0.2PFA depending on the criticality of the action and data availability.

Where the CISA data are available and actionable, the CISA floodplain must be at least as restrictive as the 1 percent annual chance flood elevation or 0.2PFA, again depending on the criticality of the action. In this way, FEMA has addressed equity concerns in the policy approach, specifically to mitigate the likelihood of over- and under-building. FEMA believes that allowing for a lower standard for non-critical actions helps address concerns related to overbuilding. Selecting the lower approach for non-critical actions will still result in a higher level of resilience than the current requirements under part 9 while also taking equity and cost-effectiveness considerations into account.

CISA Applicability

Comment: A commenter requested FEMA apply the CISA to all of the agency's mapping and map revision processes. The commenter wrote that letters of map amendment (LOMAs) and letters of map revision-based on fill (LOMR-Fs) essentially allowed FEMA to piecemeal exempt properties and stated the combination of Executive Orders and statutes required FEMA to build a robust and well-informed mapping program to guide development away from floodplains. The commenter stated the exclusion of LOMAs and LOMR-Fs from FFRMS created an exception that would swallow the rule.

FEMA Response: FEMA appreciates the commenter's support of the CISA and understands the commenter's concerns regarding LOMAs and LOMR-Fs. FEMA is not making changes to the agency's NFIP mapping process with this rulemaking or accompany FFRMS

policy. The NFIP's regulations on mapping and changes to FEMA maps are found at 44 CFR part 70 *et seq.* Further, the proposed changes to part 9 do not affect implementation of the NFIP's floodplain management regulations. Those regulations are found at 44 CFR part 59 *et seq.* The framework that FEMA uses in part 9, including the revised definition of floodplain applicable to actions subject to the FFRMS under this rule, is distinct from NFIP mapping. FEMA believes that the flexibility outlined in 44 CFR 9.7 and the practice of best available information will allow the application of part 9 to adjust to any future change made in the NFIP mapping process.

CISA and Equity Considerations

Comment: A commenter requested FEMA consider inequities in access to the best available climate science as some communities may not have access to the CISA data. The commenter acknowledged FEMA's proposed alternatives to the CISA but requested the agency consider how this rule would unintentionally exacerbate inequities in flood preparedness and safety across the country and how FEMA would distribute Federal funding and other financial assistance to address these discrepancies.

FEMA Response: FEMA's revisions to part 9 reflect consideration of the type and criticality of the action involved, the availability and actionability of the data, and equity concerns in the implementation of Executive Order 11988, as amended. FEMA also has an agency-wide initiative focused on reducing barriers and increasing opportunities so all people, including those from vulnerable and underserved communities, can get help when they need it.¹⁷¹ FEMA notes any increased costs are generally eligible for funding under FEMA's assistance programs subject to cost share requirements.

As part of the implementation cost, FEMA will publicize the FFRMS to public and SLTT partners, identifying what the FFRMS is and how the agency will implement the Executive Order as amended and part 9. These resources will help applicants applying for FEMA-funded assistance programs. FEMA's regional offices will also provide technical assistance in support of FFRMS implementation.

As climate science data continues to be advanced, FEMA will continue to rely on 44 CFR 9.7, FEMA Policy 104-008-2: Guidance on the Use of

¹⁶⁹ See https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024) and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

¹⁷⁰ See Revised Guidelines pg. 23 for information on flooding characteristics and Appendix H of the Revised Guidelines for information on the CISA, pgs. 20-22.

¹⁷¹ See <https://www.fema.gov/emergency-managers/national-preparedness/equity> (last accessed Jan. 24, 2024).

Available Flood Hazard Information,¹⁷² and the Revised Guidelines in determining whether CISA and flood hazard data is available and actionable. Appendix H of the Revised Guidelines and the CISA FFRMS State of the Science Report provide an overview of the available and actionable data for CISA, which is the basis for these interagency supporting tools. The Revised Guidelines also provide an explanation of how the FFRMS will be updated in the future. Additionally, where a community does have access to CISA data and has adopted its use for floodplain management, that data will be used pursuant to 44 CFR 9.11(d)(6), as long as it results in a more restrictive standard. In this way the unique considerations of a particular community are also taken into account.

2. FVA

Comment: A commenter stated FEMA should be prepared to reassess the use of 2 and 3 feet of freeboard in the FVA according to the latest climate science. The commenter requested the FFRMS should explicitly allow this type of reassessment to take place without rulemaking.

FEMA Response: The FVA is an alternative approach to the CISA under the FFRMS. FEMA cannot independently revise the FFRMS. The MitFLG in consultation with the FIFM-TF will reassess the FFRMS annually, after seeking stakeholder input, and provide recommendations to the WRC to update the FFRMS, including the FVA, if warranted based on accurate and actionable science that takes into account changes to climate and other changes in flood risk. The WRC shall issue an update to the FFRMS at least every 5 years.¹⁷³

FEMA appreciates the intent behind the comment, namely that the agency should implement the FFRMS in a way that allows for reassessments that account for changes in climate science. FEMA has ensured that its implementation of the FFRMS will allow for such updates. Specifically, in this final rule, FEMA will implement the FFRMS by adopting the flexible framework identified in Executive Order 11988, as amended by Executive Order 13690, in its entirety, instead of mandating a particular approach in its regulations and will provide additional guidance (more readily capable of revisions and updates) that addresses

which approach FEMA would generally use for different types of actions. Consistent with Executive Order 11988, as amended, and the Revised Guidelines, the CISA requirements will change as the available and actionable data change and FEMA will similarly update its guidance, as appropriate, to account for such changes.

3. 0.2PFA

Comments: Commenters asked questions about the 0.2PFA and how FEMA would implement the approach. A commenter expressed support for the use of the 0.2PFA as an effective alternative to the CISA while technology and capabilities to implement CISA are scaling to a nationwide level. At the same time, the commenter recommended that FEMA allow for the flexibility to use the most protective and up-to-date science in coastal regions or where higher quality data and analytics are available. The same commenter wrote that FEMA should continue educating the public regarding flood risk from flood events that could affect areas beyond the 0.2 percent annual chance floodplains. The commenter stated that during the past two decades, many storm events of a magnitude greater than a 0.2PFA event have occurred, such as the 2010 Nashville flood and the 2017 inland flood induced by Hurricane Harvey. The commenter stated that while reliance on the 0.2PFA would significantly reduce flood risk in comparison to reliance upon the 1 percent annual chance floodplain, FEMA should not be satisfied that this would be sufficient. The commenter also requested FEMA include land surface flooding. The commenter also recommended the flood mitigation standard for critical infrastructure (such as subway systems, metropolitan wastewater treatment facilities, and others) be different and higher than those for non-critical. Another commenter requested FEMA account for the area of elevation that was above or below sea level to plan for implementation of the 0.2PFA.

FEMA Response: FEMA's policy approach provides flexibility. As explained in the FFRMS policy, FEMA will use the CISA to determine the floodplain where that data is available and actionable. Where the CISA data is not available or actionable, FEMA will utilize either the FVA or 0.2PFA depending on the criticality of the action and data availability. FEMA notes there is no requirement in the FFRMS or the Revised Guidelines to select the higher approach when not using the CISA, as FFRMS is a resilience standard. "When an agency is not using

the Climate-informed Science Approach in riverine flood hazard areas, the agency may select either the Freeboard Value Approach or the 0.2-percent-annual chance elevation, as appropriate, and is not required to use the higher of the two."¹⁷⁴

FEMA will continue to rely on 44 CFR 9.7, FEMA Policy 104-008-2: Guidance on the Use of Available Flood Hazard Information,¹⁷⁵ and the Revised Guidelines in determining whether CISA and flood hazard data is available and actionable. FEMA will use the best available information in making the floodplain determination under part 9, and the best available information may include information that is non-regulatory or FEMA preliminary flood hazard data. To be designated as the best available information, it must be at least as restrictive as information provided by effective FIRMs. Pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be used and this includes the use of local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data results in a more restrictive standard.

To clarify, FEMA is not relying on the 1 percent annual chance floodplain in the FFRMS approaches. Rather, FEMA is relying on the CISA, FVA, or 0.2PFA. FEMA's FFRMS policy clarifies the agency will use the higher of the FVA or 0.2PFA for critical actions when CISA data is not available or actionable. FEMA will continue to utilize the 1 percent annual chance floodplain under part 9 only for those actions that are not subject to the FFRMS and are considered non-critical actions.

FEMA has considered and will continue to consider flooding characteristics such as land surface flooding consistent with § 9.7. FEMA's FFRMS policy also emphasizes whether the action is a critical action as one of the factors to consider when conducting the analysis as to the approach to utilize when CISA data is not available or actionable.

Regarding the commenter's concerns about elevation, the interagency tools FEMA will use to determine the 0.2PFA, as well as CISA and FVA, will account for ground elevation.

Comment: One commenter wrote only 20 percent of the country had detailed horizontal floodplain boundaries of the 0.2 percent annual chance floodplain

¹⁷² Available at https://www.fema.gov/sites/default/files/2020-04/Available_Flood_Hazard_Information_Policy_104-008-2.pdf (last accessed Mar. 12, 2024).

¹⁷³ Section 4, Executive Order 13690, 80 FR 6425 (Feb. 4, 2015).

¹⁷⁴ See Revised Guidelines, pg. 57.

¹⁷⁵ Available at https://www.fema.gov/sites/default/files/2020-04/Available_Flood_Hazard_Information_Policy_104-008-2.pdf (last accessed Mar. 12, 2024).

and that the elevation determination was also important given that some flood depths could be lower in the 0.2 annual chance floodplain than in the 1 percent annual chance floodplain. A commenter stated the lack of comprehensive elevation information for the 0.2PFA would cause confusion among stakeholders and applying FFRMS without accounting for distinct elevation profiles undermined the practicality and success of the policy. Another commenter supported utilizing the 0.2PFA and FVA when the CISA data was not available and not actionable. The commenter noted wave modeling should be included when applying the 0.2PFA and FEMA had not regularly produced maps that incorporate wave modeling. The commenter requested FEMA regularly include wave modeling in its 0.2 percent annual chance flood maps.

FEMA Response: As explained above, FEMA's FFRMS policy identifies data availability as a factor in determining the FFRMS approach to be used for a specific action. FEMA recognizes data availability of the 0.2 percent annual chance floodplain, as well as technical considerations relating to how wave action may be incorporated, can be challenges in implementing the 0.2PFA. In coastal areas, the Revised Guidelines note Federal agencies should use the FVA as the minimum elevation when not using the CISA if the 0.2 percent annual chance flood information depicted on FEMA's regulatory products considers storm-surge hazards but not wave action, and wave action data cannot be obtained from other sources.

As the commenter notes, when the CISA is not available and the 0.2PFA is used in coastal areas, the 0.2PFA should consider wave action. As the Revised Guidelines state, before using the 0.2PFA in that situation, an analysis should be conducted of coastal flood hazards at the site that incorporates the local effects of wave action, scour and erosion, wave run-up, and overtopping.¹⁷⁶ In some instances, the FEMA 0.2 percent annual chance flood elevation, which does not consider wave action, will be lower than the current BFE or the FVA. As noted in the Executive Summary of this preamble, FEMA edited the agency's proposed FFRMS policy to clarify that FIRMs and Federal Insurance Studies (FIS) provide 1 percent annual chance flood elevations including wave action in coastal areas; however, the 0.2 percent annual chance flood elevations generally are stillwater elevations that do not account for the effects of wave

action. To emphasize the importance of this for non-critical actions in particular, the FFRMS policy wording has been clarified and relocated to Section C.3.a, stating that when the lower of the 0.2PFA or FVA is used, the FVA flood elevation must be used in those instances where the 0.2-percent-annual-chance flood elevation does not account for the effects of wave action.¹⁷⁷ For critical actions, the policy approach is to use the higher of the FVA or 0.2PFA, which would avoid relying on 0.2PFA in situations where the 0.2PFA elevations would be lower.

4. Fourth Approach

Comment: A commenter stated the fourth approach listed in the rule was a "hedge" and resulted in inexcusable operational uncertainty to the FFRMS. The commenter stated the public would struggle to understand the appropriate standard on an annual basis given this approach. Another commenter stated the fourth approach was a "safety net" and consistent with the other commenter, stated the approach amplified operational uncertainty within FFRMS rather than addressing it.

FEMA Response: FEMA disagrees that the fourth approach in the regulation provides additional uncertainty for the public. This approach is provided in the Revised Guidelines, and FEMA would provide notice to the public of any such approach and the adoption of that approach consistent with Executive Order 11988, as amended.

5. Alternatives to FFRMS Approaches

Comment: One commenter suggested that cost-benefit analysis could serve as an alternative to using the FFRMS approaches. The commenter stated cost-benefit analysis informed by risk could be scaled to the circumstances of decisions and would achieve better results than applying error-prone arbitrary standards. The commenter stated that benefits and costs can be broadly conceived to include more than values reflected in market transactions. The commenter wrote that FEMA applied cost-benefit analysis in a partial way to its hazard mitigation program only and asked how not leveraging a cost-benefit analysis but instead applying the FFRMS approaches would result in net Federal resource savings.

FEMA Response: As an initial matter, FEMA notes that establishing the floodplain for each project on the basis of individualized cost-benefit assessments would potentially be inconsistent with the commenter's stated preference for predictability and

reduced uncertainty (as reflected in the commenter's objection to the CISA standard). For instance, the commenter's proposal could require individualized flood risk assessments that would make it challenging for private parties to predict the applicable floodplain prior to engaging with FEMA. In addition, in at least some cases, the commenter's proposed approach would call for consideration of relevant data and science in order to understand the potential costs and benefits of building to different levels of resilience. Although as reflected throughout this response and preamble, FEMA shares the commenter's sensitivity to cost and preference to limit unnecessary expenditures to the extent possible, FEMA does not believe that the approach suggested by the commenter is necessarily more likely to be predictable or administrable, or to maximize net benefits.

While not all of FEMA's programs are statutorily required to be cost-effective, FEMA has consistently leveraged cost-benefit analysis and will continue to do so along with minimum standards for floodplain management across the agency's programs to provide for Federally funded projects that are both cost-effective and result in more resilient communities.

In its NPRM and proposed policy, FEMA explained how the agency considered cost along with data availability, criticality of the action, and equity in establishing a flexible framework for FFRMS implementation. Consistent with the Revised Guidelines, FEMA's preferred approach is the CISA, but the FFRMS policy explains the CISA must be available and actionable and where it is not, the FVA or 0.2PFA will be utilized depending on the criticality of the action and availability of data.

FEMA believes the benefits of preventing property damage and potentially saving lives justify the costs of the rule. These benefits are a result of the improved protection of structures due to increased elevation and floodproofing standards in FEMA's implementation of the FFRMS. This rule will help to ensure that Federal investments are better protected from flood damage, and the natural values of floodplains are preserved. If, in the future, the commenter were to identify a specific cost-benefit methodology that warranted adoption via the process outlined in the Executive Order, FEMA could in principle pursue such an option.

Comments: Some commenters recommended FEMA adopt specific building codes and design standards as part of this rulemaking. One commenter

¹⁷⁶ See Revised Guidelines, pg. 57.

¹⁷⁷ See section C.3.a note 13, pg. 4.

stated FEMA's rule was consistent with ASCE Policy Statement 421. The commenter recommended FEMA adopt both the current 2022 edition of ASCE 7 as well as Supplement #1 and Supplement #2 for the Flood Chapter, and the upcoming revision to ASCE 24. Another commenter recommended FEMA require up-to-date editions of the International Residential Code (IRC) and International Building Code (IBC) to ensure the FFRMS incorporates the most stringent flood provisions for Federally assisted construction in flood zones. Another commenter also recommended FEMA specifically adopt a reference to the ANSI/FM Approvals 2510 standard for floodproofing/flood mitigation products, similar to the U.S. Department of Housing and Urban Development (HUD)'s proposal to allow floodproofing of non-residential areas below the FFRMS floodplain elevation in their NPRM.

FEMA Response: FEMA appreciates the commenter's concerns and notes the agency does implement specific codes and standards through grant program policies and requirements.¹⁷⁸ However, the scope of this rule is limited to implementation of FFRMS consistent with Executive Order 11988, as amended, and the Revised Guidelines; FEMA did not propose to adopt specific building codes and standards in the NPRM. FEMA may, however, clarify the use of such standards through additional guidance.

FEMA adopted a Building Codes Strategy¹⁷⁹ in March 2022 that focuses on leveraging partnerships to promote current hazard resistant building codes; understanding stakeholder needs to identify opportunities that advance building code adoption and enforcement; amplifying climate science messaging to increase public demand for building codes and standards; and targeting building code adoption outreach to the most vulnerable communities to achieve a more resilient

nation. FEMA believes the changes made in this final rule and the FFRMS policy will further this strategy without mandating specific codes and standards in the regulatory text. FEMA will continue to review and update the agency's policies and guidance regarding codes and standards to ensure the agency is promoting use of the standards consistent with FEMA program requirements.

FEMA appreciates the commenter's request that the agency mirror HUD's proposal to allow floodproofing of non-residential structures below the FFRMS flood elevation. FEMA already allows for floodproofing of non-residential structures below the floodplain in 44 CFR 9.11(d)(3) and will continue to allow floodproofing below the FFRMS flood elevation. No changes to the regulatory text are required to achieve this result.

H. FEMA's FFRMS Policy Approach

1. Overall

Comments: Commenters offered support for the edits proposed to § 9.7 and the accompanying proposed FFRMS policy document to implement FFRMS. Commenters also stated specific support for FEMA's policy decision to prioritize the use of CISA when determining the FFRMS floodplain for actions subject to the FFRMS. Commenters were also generally supportive of FEMA's approach to utilize either the FVA or 0.2PFA where CISA data was not available or not actionable.

FEMA Response: FEMA appreciates the commenter's agreement with the general policy approach detailed in FEMA's FFRMS policy and the agency is finalizing that policy approach with the publication of this final rule. FEMA notes the revisions made to part 9 apply only to FEMA projects and not all Federally funded projects as some commenters suggested. All Federal agencies will utilize the Revised Guidelines for their own FFRMS implementation.

Comment: One commenter wrote in support of the revisions to § 9.7. The commenter stated that a recent TMAC report indicated that existing 1 percent and 0.2 percent annual chance floodplains were insufficient for informing land use practices and stated the use of CISA aligned with TMAC's principle to use a climate-informed map for floodplain management, separate from the 1 percent annual chance map used for NFIP mandatory purchase and other regulatory requirements.

FEMA Response: FEMA appreciates the commenter's support of the agency's preferred approach and the

clarifications made in § 9.7 as part of this final rule. Executive Order 11988, as amended, and the FFRMS reinforce the importance of avoiding adverse impacts associated with actions in or affecting a floodplain and minimizing potential harm if an action must be located in a floodplain. As amended, Executive Order 11988 directs agencies to use a higher vertical flood elevation and corresponding horizontal floodplain than that of the base flood for Federally funded projects to address current and future flood risk and help ensure that projects last as long as intended. FEMA appreciates the commenter's reference to the recent TMAC recommendations, but notes TMAC recommendations are not binding on FEMA and relate directly to the NFIP, not necessarily to part 9 and this final rule.

Comment: One commenter was not supportive of FFRMS, stating that a national "one-size-fits-all" approach that lacked flexibility to address specific regional and local circumstances and needs and a uniform strategy would not adequately address the nuanced and varied nature of flood dynamics. The commenter wrote that without tailored considerations for regional variations, FFRMS overlooked critical factors, risking inconsistency and inefficiency in flood management efforts.

FEMA Response: The FFRMS is a resilience standard with flexibility in the approach selected to meet the standard. FEMA's FFRMS policy explains how the agency selects the FFRMS approach to use for each project and is not a "one-size-fits-all" policy. The FFRMS policy is flexible to address data availability based on the location of the action, criticality of the action being taken, and equity concerns and allows consideration of regional variations and community concerns.

SLTTs can provide input into the floodplain determination. Pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be used. This includes the use of local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data result in a more restrictive standard. FEMA values additional input from SLTT partners and the public throughout the 8-step process.

Comment: Another commenter also opposed FFRMS, stating that the approaches based on elevation and areal extent determined by flood elevations across the watershed were subject to availability heuristic bias. The commenter stated that higher is not always better and that FFRMS did not consider whether the standard was prone to error and therefore introduced

¹⁷⁸ For example, FEMA Recovery Interim Policy 104-009-11 Version 2.1, "Consensus-Based Codes, Specifications and Standards for Public Assistance" (December 20, 2019) requires "application of the latest nationwide consensus-based codes, specifications and standards that incorporate hazard resistance for PA funded projects" including buildings, electric power, roads, bridges, potable water, and wastewater. Available at https://www.fema.gov/sites/default/files/2020-07/fema_DRRRA-1235b-public-assistance-codes-standards-interim-policy.pdf (last accessed Jan. 24, 2024). HMA also specifically references ASCE 24 and ASCE 7 in the HMA Program and Policy Guide available at <https://www.fema.gov/grants/mitigation/hazard-mitigation-assistance-guidance> (last accessed Jan. 24, 2024).

¹⁷⁹ See "Building Codes Strategy" March 2022 available at https://www.fema.gov/sites/default/files/documents/fema_building-codes-strategy.pdf (last accessed Jan. 24, 2024).

new risks, including the risk that FFRMS would impose more costs than it achieves in benefits. The commenter stated FEMA acknowledged the proposed standard would make errors and, in some cases, imposed costs greater than anything it prevented or saved. The commenter recommended that FEMA test its new standard in proposed use cases to determine where the standard would make errors. The commenter recommended that where the probability and consequences of errors from using the standard were significant, the agency should resort to detailed cost-benefit analysis. The commenter recommended that the FFRMS be formulated with reference to alternatives and cost-benefit analysis, stating the public deserves some clarity about when FFRMS applies and when it did not.

FEMA Response: FEMA disagrees with the commenter that the agency is assuming higher is universally better. There is no requirement in the FFRMS or the Revised Guidelines to select the most restrictive standard, as FFRMS is a resilience standard. The Revised Guidelines state “[w]hen an agency is not using the Climate-informed Science Approach in riverine flood hazard areas, the agency may select either the Freeboard Value Approach or the 0.2-percent-annual chance elevation, as appropriate, and is not required to use the higher of the two.”¹⁸⁰ In some instances, building to a higher elevation may lead to overbuilding and thus not be the most cost-effective, equitable approach particularly for non-critical actions. FEMA believes its proposed approach to use the CISA, and to utilize the lower of the FVA or 0.2PFA where the CISA is not available and actionable, reflects appropriate sensitivity to cost and risk.

Further, the revisions to part 9 do not change FEMA’s long-standing requirement as part of implementing Executive Order 11988, as amended, to only perform or fund actions within or affecting floodplains if those actions are the only practicable alternative. Through the 8-step process, FEMA will consider alternative locations, alternative actions, nature-based solutions, and the no action alternative under the practicability analysis. If there is no practicable alternative, FEMA will perform or fund the action and will minimize any adverse impacts when doing so.

Regarding clarity on the application of FFRMS, FEMA defines “action subject to the FFRMS” as “any action where FEMA funds are used for new

construction, substantial improvement, or to address substantial damage to a structure or facility.” The FFRMS applies to grants for projects funding the new construction, substantial improvement, or repair of substantial damage under FEMA programs such as IA, PA, and HMA programs, and grants processed by FEMA’s GPD. FFRMS applies only to Federal actions and this rule only applies to those actions FEMA takes using Federal funding. This rulemaking is generally not expected to negatively impact individuals and their ability to pay. Where applicable, any increased costs associated with this rulemaking would be subject to cost share requirements for FEMA’s programs.

FEMA also disagrees with the commenter that the agency acknowledged the FFRMS would create errors and would impose costs greater than anything the standard would prevent or save. FEMA believes the benefits of preventing property damage and potentially saving lives justify the costs of the rule. These benefits are a result of the improved protection of structures and facilities due to increased elevation and floodproofing standards in FEMA’s implementation of the FFRMS. This rule will improve the resilience of Federal investments to be better protected from flood damage and promote preservation of the natural and beneficial values of floodplains.

FEMA believes the regulatory impact analysis was sufficiently detailed to analyze the FFRMS approaches in general, as the RIA itself was not intended to analyze the costs and benefits of applying the FFRMS standards to specific use cases. FEMA conducted an analysis to create a range of the potential impacts. FEMA does not know how many projects will be subject to the FVA, 0.2PFA, or CISA requirements over the 10-year period as FEMA anticipates it to continually change. Therefore, FEMA has analyzed the impact of FVA, 0.2PFA and CISA for each of the programs, PA, IA, and HMA as if each were the only FFRMS expansion option. Evaluation of the practicability of certain FFRMS standards in the context of specific use cases occurs as part of the 8-step process, and to the extent that FEMA finds certain approaches to be incompatible with practicable implementation in certain cases, FEMA may issue further guidance on the topic. In general, however, commenters did not identify categories of actions for which application the FFRMS approaches appears likely to be particularly problematic.

While FEMA could not quantify the costs and benefits of several aspects of this rule, FEMA was able to quantify the number of structures and facilities that would be impacted by the rule. FEMA was transparent about its inability to quantify the costs and benefits of several aspects of the rule. FEMA provided a literature review of relevant benefits that could be realized from flood mitigation, an analysis of benefits quantified for the rule, and a qualitative description of additional benefits that could be realized from the rule. FEMA conducted a quantitative cost-benefit analysis based on the data available.

2. Application of the FFRMS Approaches for Critical and Non-Critical Actions

Comments: Commenters were generally supportive of FEMA’s policy approach to utilize the higher of the FVA or 0.2PFA for critical actions where CISA data was not available and/or actionable. Some of these commenters, however, expressed concerns with utilizing the lower of the FVA or 0.2PFA for non-critical actions where CISA data was not available and not actionable. Several of these commenters inaccurately stated policy positions on the FFRMS approaches selected by other Federal agencies for non-critical actions.

Commenters requested that FEMA adopt the higher of the FVA or 0.2PFA for non-critical actions where CISA data was not available and not actionable. Commenters stated that FEMA’s policy decision to utilize the lower standard would undermine the urgent need to design development proposals to a more resilient standard and minimize overall impacts to the floodplain. In response to FEMA’s statements in the NPRM regarding concerns with overbuilding and inequitable outcomes that may not be cost-effective, a commenter noted that FEMA has consistently advocated for states and localities to embrace stricter standards such as updated building codes that can have similar cost implications. Commenters also wrote that upfront investments in resilient development produced significant cost savings to communities in the long run and stated that the cost of construction was not the only consideration for costs, particularly for housing. These commenters requested FEMA consider the higher standard for non-critical actions, stating that the long-term benefits would outweigh the costs.

FEMA Response: As explained above, there is no requirement in the FFRMS or the Revised Guidelines to select the most restrictive standard, as FFRMS is

¹⁸⁰ See Revised Guidelines, pg. 57.

a resilience standard. The Revised Guidelines state “[w]hen an agency is not using the Climate-informed Science Approach in riverine flood hazard areas, the agency may select either the Freeboard Value Approach or the 0.2-percent-annual chance elevation, as appropriate, and is not required to use the higher of the two.”¹⁸¹ While the approach the commenters suggested would ensure that applicants were building all actions to the most protective level where CISA data is not available, this approach may lead to overbuilding and thus not be the most cost-effective, equitable approach particularly for non-critical actions. FEMA believes the agency’s approach is sufficiently protective of all actions and would be less expensive and complex to administer and implement than the commenters’ approach.

FEMA did consider the long-term costs and benefits of the rulemaking and policy and does not agree with the commenters that FEMA’s policy approach would result in inequities. Rather, FEMA believes the policy approach is appropriate as it will help ensure communities can rebound quickly and effectively from a disaster.

Comments: Other commenters requested FEMA require the use of the more protective standard for non-critical actions to better align with HUD’s proposed rule to implement the FFRMS. Several of those commenters stated that aligning with HUD’s approach would reduce conflicts and delays. One commenter stated that FEMA’s approach to use a lower elevation for non-critical projects facilitated a beneficial benefit/cost ratio. That commenter stated the higher standard should not be overly burdensome and consistent with another commenter noted the cost of construction was not the only consideration for costs, particularly for housing.

FEMA Response: As explained above, there is no requirement in the FFRMS or the Revised Guidelines to select the most restrictive standard, as FFRMS is a resilience standard. While the approach the commenter suggested would ensure applicants were building all actions to the most protective level where CISA data is not available, this approach may lead to overbuilding and thus not be the most cost-effective, equitable approach, particularly for non-critical actions. FEMA believes the agency’s approach is sufficiently protective of all actions and would be less expensive and complex to administer and implement than the commenter’s approach.

While HUD’s rule would require all proposed actions that require an Environmental Impact Statement (EIS) under NEPA to define the FFRMS floodplain using CISA, FEMA does not believe it is appropriate to require CISA in every instance where an EIS is required. FEMA cannot utilize CISA if CISA data is not available and actionable even if an action requires an EIS. Where CISA data is both available and actionable, FEMA will require CISA, including for those proposed actions that require an EIS.

HUD proposed to use the CISA to determine the FFRMS floodplain where the data is available and actionable. For non-critical actions where CISA is unavailable, HUD will use the 0.2PFA. Where the 0.2PFA is also unavailable for non-critical actions, HUD will use the FVA. For critical actions where CISA is unavailable, HUD will use either the 0.2PFA or the FVA to determine the FFRMS floodplain, whichever results in the larger floodplain and higher elevation. The only significant difference between HUD’s policy approach and FEMA’s is that HUD will first use the 0.2PFA for non-critical actions where it is available, but the CISA is not, and FEMA will use the lower of the 0.2PFA and the FVA for non-critical actions where CISA is not available.

FEMA considered requiring the use of the 0.2PFA when CISA is not available for non-critical actions rather than the lower of the 0.2PFA or FVA. While application of the 0.2PFA may provide a more consistent reduction of flood risk as it is probability based, the relationship to the FVA varies depending on topography (*i.e.*, in some instances the 0.2PFA may result in a lower flood elevation than the FVA). Application of only the 0.2PFA without a comparison to the FVA may result in building to a higher resilience standard than is necessary. There could also be equity concerns related to underbuilding or overbuilding to this standard, as communities seek to rebound quickly and effectively from a disaster. Data availability of the 0.2 percent annual chance floodplain can also be a challenge in implementing the 0.2PFA, as well as technical considerations relating to how wave action may be incorporated. In coastal areas, the Revised Guidelines note Federal agencies should use the FVA as the minimum elevation when not using the CISA if the 0.2 percent annual chance flood information depicted on FEMA’s regulatory products considers storm-surge hazards but not wave action and wave action data cannot be obtained from other sources. Only some

of those coastal areas have included wave action in the computation of the 0.2 percent annual chance floodplain.

FEMA’s FFRMS policy provides details on how FEMA will coordinate with other agencies when implementing actions in the same area as another Federal agency. See Section H, page 9. FEMA’s interagency consultative role in the broader implementation of the FFRMS across the Federal government, through the agency’s participation in the Interagency Working Groups and the FIFM–TF helps ensure consistent and effective implementation.

FEMA agrees with the commenter that equity is an important consideration and FEMA incorporated equity into the agency’s policy approach as explained above. Equity was a primary consideration for FEMA’s policy approach, not a desire to achieve a better benefit-cost ratio for non-critical actions as the commenter suggests. FEMA did consider the long-term costs and benefits of the rulemaking and policy and does not agree with the commenters that the policy approach would result in inequities. Rather, FEMA believes the policy approach is appropriate as it will help ensure communities seeking to rebound quickly and effectively from a disaster may do so.

Comment: One commenter also stated using the less restrictive standard could result in greater impacts on floodplains, ESA-listed species, Tribal treaty rights, and realized costs to vulnerable communities. The commenter stated using the higher standard between FVA or 0.2PFA when CISA data was not available and not actionable would not only prevent impacts on floodplains but would also avoid a similar situation that required expensive infrastructure upgrades and government liability after poorly located initial development within floodplains.

FEMA Response: As explained above, there is no requirement in the FFRMS or the Revised Guidelines to select the most restrictive standard, as FFRMS is a resilience standard. While the approach the commenter suggested would ensure applicants were building all actions to the most protective level where CISA data is not available, this approach may lead to overbuilding and thus not be the most cost-effective, equitable approach particularly for non-critical actions. FEMA believes the agency’s approach is sufficiently protective of all actions and would be less expensive and complex to administer and implement than the commenter’s approach.

A more restrictive application of the FVA or 0.2PFA would not necessarily

¹⁸¹ See Revised Guidelines, pg. 57.

determine whether an action will impact a protected species or critical habitat or impact Tribal treaty rights. In step 4 of the 8-step process, FEMA determines impacts to the floodplain which include changes to the hydraulics and hydrology of the floodplain which informs on potential impacts to protected species and their critical habitats. FEMA will also perform Section 7 consultation under the Endangered Species Act where appropriate.

3. Alternative Policy Approaches

Comments: Two commenters provided feedback on FEMA's specific request for comment on requiring the highest elevation for all actions regardless of criticality. One commenter noted FEMA's policy approach was flexible and acknowledged the need to be flexible and design an approach that would not unduly burden communities. The commenter recommended that FEMA continue to evaluate these approaches and consider revising and strengthening the standards if the standards become insufficiently protective. The other commenter stated that completing the required floodplain analysis for any one of the approaches would be challenging on its own and to require the analysis and consideration of all three would be costly and might not yield results materially different from the CISA. The commenter stated that because CISA would result in a determination of the appropriate level of resilience to design minimization measures, it would be unnecessary to require the use of the highest standard for all actions. The commenter stated that such an approach would be costly and, in some instances, would result in projects being built to higher resilience levels than required. This commenter supported FEMA's policy approach for critical actions as separate and apart from other actions, stating by separating critical actions from others, FEMA would be able to properly balance different levels of protection with minimization and mitigation measures and cost considerations.

FEMA Response: FEMA appreciates the commenters' consideration of the alternatives and understanding of the need for a flexible approach balancing cost and equity considerations. FEMA agrees with the commenter that the use of the highest standard for all actions is not always appropriate and the FFRMS policy reflects the decision to use the lower standard for non-critical actions. FEMA intends to continue to evaluate the policy approach as FFRMS is implemented and will consider future revisions as appropriate. While FEMA

understands the commenter's concern that completing the analysis for all of the approaches for every action could be an administrative burden on the agency, the agency does not believe that completing the analysis for any one of the approaches is on its own too challenging. As explained above, FEMA will use the FFRMS Job Aid to determine the FFRMS floodplain for actions, and that tool provides the agency and stakeholders with a methodology and process for completing the analysis.

Comment: Two commenters wrote that FEMA artificially constrained the agency's consideration of alternatives to just the three disclosed regulatory approaches in the proposal and did not consider no regulatory action as an alternative. One of the commenters added that FEMA did not assess how private and non-Federal interests would adapt to flooding without regulation and the no regulation alternative likely understated flood adaptation, which resulted in the cost-benefit analysis overstating the benefits of the three regulatory alternatives. The commenter also wrote the true value of cost-benefit analysis is nearly always realized when alternatives are identified that achieve substantial benefits and at much less cost than much higher levels of regulation. The commenter stated that FEMA could have analyzed other alternatives, such as strategic choices of use-case subsets for application of the various FEMA standards rather than all use-cases being subject to CISA. The commenter further stated that the FVA or 0.2PFA entail much lower analysis costs and are probably better suited to decisions where the costs of the structures or costs of adaptation were lower. The commenter stated avoiding the CISA in those situations might result in substantial cost savings.

FEMA Response: FEMA's policy approach detailed in the NPRM preamble explains how the agency balanced consideration of costs with data availability, criticality of the action, and equity in establishing a flexible framework for FFRMS implementation. Consistent with the Revised Guidelines, FEMA's preferred approach is the CISA, but the FFRMS policy explains the CISA must be available and actionable and where it is not, the FVA or 0.2PFA will be utilized depending on the criticality of the action and availability of data. The CISA is FEMA's preferred approach, as FEMA believes it has the potential to be the best and most well-informed approach to building resilience in an equitable manner and ensuring a reduction in disaster-related suffering. CISA is designed to meet

current and future estimates of flood risks unique to the location and thus provide the best overall resilience, cost effectiveness, and equity. FEMA understands the availability and actionability of data are key factors in completing the RIA in a consistent, equitable manner and believes data availability and actionability will continue to advance for the CISA. In response to the commenter's concerns that FEMA did not assess how private and non-Federal interests would adapt to flooding without regulation, FEMA notes that this regulation would not regulate purely privately funded activity in the floodplain. To the extent that private incentives exist to plan for increased flood risk, those incentives are substantially diluted by the use of FEMA assistance to support projects. FEMA thus did not understate private incentives to plan for flood risk and did not overstate the benefits of the regulatory alternatives.

FEMA's policy approach includes consideration of the alternatives as part of the framework explained above. FEMA intends to continue to evaluate the policy approach as FFRMS is implemented and will consider future revisions as appropriate. Additionally, FEMA's RIA does analyze all three approaches, as well as the no action alternative the commenter references. Under the No Action alternative, although non-Federal jurisdictions or private entities may continue to adapt to the future risk of flooding over time, the current Federal standards would remain. To the extent that private incentives exist to plan for increased flood risk, those incentives are substantially diluted by the use of FEMA assistance to support projects. Accordingly, such adaptation is unlikely to occur as quickly or as fully as this rule, leaving Federal investments at a greater risk of flooding than under the final rule. Because of the greater risk to structures and facilities, there is also a greater risk to life. In addition, the natural value and function of the floodplains would be at a greater risk of loss under the No Action alternative. However, the No Action alternative would initially cost incrementally less than the FFRMS approach and would result in less administrative complexity as compared to implementing the FFRMS. Overall, based on the evaluation, the FFRMS was selected over the No Action alternative for the benefits that it provides to Federal investments and those who use them.

In response to the commenter's suggestion on how FEMA should have analyzed other alternatives, such as strategic choices of use-case subsets for

application of the various FEMA standards rather than all-use cases being subject to CISA, FEMA did complete an analysis of all three approaches. FEMA analyzed the impact of the FVA, 0.2PFA, and CISA for each of the programs (PA, IA, and HMA) as if each approach were the only FFRMS expansion option to create a range (see sections 7.4, 7.5, and 7.6 in the RIA). In reality, it is likely that with FFRMS, there will be a mix, with some projects falling under CISA, FVA, or 0.2PFA. Therefore, the actual cost will fall somewhere within the range. FEMA selected the CISA as the primary approach, as it is the preferred option. CISA is designed to meet current and future estimates of flood risks unique to the location and thus provide the best overall resilience, cost effectiveness, and equity. As noted above, FEMA intends to continue to evaluate the policy approach as FFRMS is implemented and will consider future revisions as appropriate. Such revisions could in principle include defaulting to the FVA or 0.2PFA for smaller investments, although FEMA believes that the administrative costs associated with implementing the CISA are likely to decline over time.

Further, FEMA did consider the long-term costs and benefits of the rulemaking and policy. Rather, FEMA believes the policy approach is appropriate, as it will help ensure communities can rebound quickly and effectively from a disaster.

4. Comments on FEMA's FFRMS Policy

Comment: A commenter requested FEMA revise the proposed principle B in the FFRMS policy ("Avoid, to the extent possible, the long- and short-term adverse impacts associated with occupancy and modification of floodplains and avoid direct or indirect support of floodplain development wherever there is a practicable alternative") to include additional language for FEMA to restore and preserve the natural and beneficial functions and values of wetlands and floodplains. Another commenter requested FEMA add a principle to the FFRMS policy and final rule specific to the restoration and preservation of the natural and beneficial functions and values of floodplains, and use of natural systems, ecosystem processes, and nature-based approaches.

FEMA Response: FEMA believes the commenters' requested revisions are unnecessary. The principles laid out in the FFRMS policy are an abbreviated version of FEMA's policy statements found in § 9.2. As stated in new § 9.2(d), FEMA shall "[r]estore and preserve the

natural and beneficial values served by floodplains" and "[p]reserve and enhance the natural values of wetlands." FEMA's longstanding requirements in 44 CFR 9.11(e) outline the agency's requirements to restore and preserve the natural and beneficial values served by floodplains and wetlands. These current requirements meet the commenters' concerns and remain unchanged in this rulemaking process.

Comment: A commenter requested other specific edits to the policy document, including adding "dry" before floodproofing throughout the document and replacing "minimization standards" with "residential flood resistant design and construction requirements." The commenter also suggested FEMA add emphasis that nature-based solutions complement the elevation requirements versus being alternative actions and implementing a nature-based solution would not exempt an applicant from the elevation requirements.

FEMA Response: FEMA believes the current language in the FFRMS policy is sufficiently clear. FEMA believes adding "dry" before floodproofing is not necessary as floodproofing is described in detail in new § 9.11(d)(3)(ii) and section G.1.c of the FFRMS policy. Further, FEMA's policy references the use of the agency's additional resources including FEMA's NFIP Technical Bulletins that address floodproofing.¹⁸² Using the term "minimization requirements" is consistent with the minimization provisions and minimization standards in § 9.11. The term "flood risk minimization measures" is preferred by FEMA to avoid confusion with "hazard mitigation" actions funded by FEMA.

FEMA believes that natural features and nature-based solutions should be considered as project alternatives and used where possible. Where they are not practicable as an alternative on their own, natural features and nature-based solutions may be incorporated into actions as minimization measures. The FFRMS policy clarifies the FFRMS is a resilience standard and where elevation may not be feasible or appropriate, the

FFRMS floodplain establishes the level to which a structure or facility must be resilient. Resilience measures include using structural or nonstructural methods to reduce or prevent damage; elevating a structure; or, where appropriate, designing it to adapt to, withstand and rapidly recover from a flood event.

Comment: The same commenter requested several clarifications. The commenter requested FEMA clarify the requirements provided in the policy were minimum requirements not maximums and that applicants could exceed those requirements. The commenter requested FEMA clarify the policy's requirements apply regardless of whether or not substantial improvement or substantial damage is triggered and also clarify whether a structure within an FFRMS floodplain must comply with the policy's requirements.

The commenter also requested clarifications on—

- The application of FFRMS to FEMA's benefit-cost analysis tool used by some FEMA programs;
- whether the FFRMS policy limited where certain projects could be done, citing an example of mitigation reconstruction projects being prohibited in V Zone; and
- what constitutes a critical action and specifically whether or not certain specific actions would be considered critical, such as construction of new safe room and stand-alone generator projects if they are supporting a critical facility.

FEMA Response: The commenter is correct that FFRMS is a minimum requirement under part 9. In section C.4 of the policy, FEMA clarifies pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be used. Actions may follow a higher standard so long as the action complies with FEMA's program requirements.

In section A.2 of FEMA's FFRMS policy, the agency clarifies applicability of the policy to specific actions, including actions involving substantial improvement and substantial damage. FEMA does not believe the policy requires additional revision given the language in section A.2 regarding applicability. Section C of the policy explains how FEMA determines the FFRMS floodplain. Specific actions listed in section A.2 that are within the FFRMS floodplain are subject to the requirements of the policy.

FEMA appreciates the commenter's interest in the application of the Benefit-Cost Analysis (BCA) tool to the FFRMS process for FEMA programs. FFRMS does consider current and future flood risks. Where CISA is available and

¹⁸² See FFRMS Policy, pg. 8, Section G.1.d "FEMA guidance provides technical information on elevation methods for new construction and retrofitting existing structures with various types of foundations. Guidance is available in NFIP Technical Bulletins (1–11), FEMA P–758: Substantial Improvement/Substantial Damage Desk Reference, FEMA P–936: Floodproofing Non-Residential Buildings, FEMA P–348: Protecting Building Utility Systems from Flood Damage, FEMA P–467–2: Floodplain Management Bulletin on Historic Structures, among other FEMA publications."

actionable, sea level rise is specifically incorporated into the determination of the FFRMS flood elevation. FEMA's FFRMS policy will generally not change BCA requirements for FEMA programs. For FEMA's HMA program, additional elevation above the BFE incorporated into the design of the project and attributed to current and future flood risk such as sea level rise would be allowable in the BCA. Currently, pre-calculated benefits that streamline the cost-effectiveness determination for structure elevation projects are limited to structures where some part of the structure is within the SFHA. For an elevation project where the entire structure footprint is outside the SFHA, a BCA will be required to show cost-effectiveness. For FEMA's PA program, cost-effectiveness requirements apply only to Hazard Mitigation measures on projects to restore disaster damaged structures and facilities. FFRMS elevation requirements are mandated by law and therefore are eligible for financial assistance without additional cost-effectiveness analysis. FEMA notes any increased costs are generally eligible for funding under FEMA's assistance programs subject to cost share requirements.

The requirements of § 9.11(d)(1) still apply and remain unchanged in this final rule. The commenter references V Zone mitigation reconstruction projects. For V Zone actions that are new construction, FEMA is prohibited from funding such actions unless the action is functionally dependent or facilitates open space use. The HMA Program and Policy Guide also states HMA mitigation reconstruction projects are prohibited in the V Zone and in floodways¹⁸³ and this final rule and FFRMS policy will not change that requirement. HMA mitigation reconstruction actions that are within the FFRMS floodplain must either be relocated or elevated to the FFRMS requirements.

Regarding the commenter's request for clarification on whether or not specific actions were considered critical and subject to FFRMS, FEMA cannot provide a full adjudication of whether an action is a critical action without context. FEMA makes the determination of whether an action is a critical action as part of the 8-step process on a case-by-case basis with input from the applicant. FEMA's definition of "critical action" is consistent with Executive Order 11988, as amended, through the Implementing Guidelines and further

clarified in the Revised Guidelines. The Revised Guidelines provide further details on what constitutes a critical action. FEMA will leverage the information in the Revised Guidelines when providing additional guidance to stakeholders.

As explained throughout this final rule, FEMA will publish additional resources for the public and SLTT partners identifying what the FFRMS is, and how the agency will implement the Executive Orders to help applicants of FEMA-funded assistance programs. FEMA's regional offices will also provide technical assistance in support of FFRMS implementation.

Comment: The same commenter also had several other recommendations for FEMA's FFRMS policy. The commenter recommended FEMA add an emphasis on specific codes and standards that might be applicable to specific FEMA programs, limit the dry floodproofing design to 3 feet for any new construction as recommended by NFIP Technical Bulletin 3, and cap elevation costs at the current NFIP ceiling for building coverage or the current replacement value. The commenter also suggested FEMA add information related to relocation regarding nature-based solutions, stating that instead of elevating or reconstructing in place the preference should be to relocate an action.

FEMA Response: The FFRMS policy provides information on FEMA's Building Codes Strategy and refers to specific codes and standards the agency leverages through specific program policies. FEMA does not believe additional emphasis on specific codes and standards is required in the FFRMS policy, as these are detailed in each specific program's policies. FEMA will distribute additional resources for the public and SLTT partners identifying what the FFRMS is, and how the agency will implement the Executive Orders to assist applicants of FEMA-funded assistance programs. FEMA will also provide technical assistance through the agency's regional offices in support of FFRMS implementation.

FEMA's FFRMS policy states "[e]levation and floodproofing requirements must be consistent with NFIP criteria or any more restrictive local standard."¹⁸⁴ Rather than direct quotation of a specific requirement for floodproofing design as the commenter requested, section G.1.d of the FFRMS policy addresses the use of other FEMA publications, including NFIP Technical Bulletins to assist readers.

FEMA believes the commenter's suggested funding limitations to cap elevation costs are outside the scope of this rulemaking. Applicants seeking FEMA program funding will be required to comply with that program's eligibility requirements, which may consider cost effectiveness of the proposed action.

Regarding the commenter's request to add information regarding relocation, FEMA notes this policy does not change the current requirement of step 3 of the 8-step process: "If a practicable alternative exists outside of the floodplain or wetland FEMA must locate the action at the alternative site."

Comment: Another commenter asked if Approach 2 was only for critical actions.

FEMA Response: Approach 2 (the FVA) may be used for both critical and non-critical actions where CISA is not available and actionable. FEMA's FFRMS policy requires FEMA to determine the FFRMS floodplain according to the CISA for all locations where the best-available, actionable hydrologic and hydraulic data methods that integrate current and future changes in flooding based on climate science exist. When CISA is not available for a critical action, the FFRMS policy requires FEMA to determine the FFRMS floodplain as the area that would be inundated by the higher of the 0.2 percent annual chance flood and 3 feet of freeboard above the BFE for that location (the Freeboard Value Approach or FVA). When CISA is not available for a non-critical action, the FFRMS policy requires FEMA to determine the FFRMS floodplain as the area that would be inundated by the lower of the 0.2 percent annual chance flood and 2 feet of freeboard above the BFE for that location (the FVA). In coastal areas where CISA is unavailable, the FFRMS policy requires the FVA be used if the available 0.2 percent annual chance flood elevation does not account for wave action.

Comment: One commenter stated several links in the policy document did not appear to be active.

FEMA Response: FEMA appreciates the commenter's review of the policy document links and has confirmed the links are updated and active in the attached FFRMS policy.

I. The FFRMS and Floodplain/Wetland Determination Data

1. Data Availability

Comments: Four commenters discussed the availability of the CISA data to implement the FFRMS and some of the commenters requested maps or other resources depicting the FFRMS

¹⁸³ Hazard Mitigation Assistance Program and Policy Guide, pg. 85 available at <https://www.fema.gov/grants/mitigation/guide> (last accessed Mar. 20, 2024).

¹⁸⁴ FFRMS policy, pg.8.

floodplain. A commenter stated there were no consistently accurate resources depicting the floodplain, floodway, the 100-year floodplain, the 500-year floodplain, or the FFRMS floodplain. The commenter stated that the floodplain determination triggered whether a proposed action was required to complete the 8-step decision-making process and the lack of FFRMS floodplain maps would create difficulty for stakeholders seeking Federal funding from FEMA for projects. The commenter stated that FEMA's work with other agencies to develop FFRMS tools and resources would help situations involving existing development but would not deter new development because the FFRMS floodplain determination would come only after the initial investments were made. The commenter added that FEMA's regulatory maps for the NFIP help stakeholders determine whether a property is located in a regulated floodplain within a short period of time and with a high degree of certainty and that the FFRMS establishes a moving, undocumented, and unmapped target that would be used haphazardly to determine the floodplain status of any given property.

Further, the commenter stated FEMA had not provided enough information on how FEMA would implement the preferred CISA approach and had not defined when data might be considered to be "available" or "actionable." The commenter stated the regulatory text lacked information on the CISA data and FEMA's request for comment on how the CISA could be implemented using a publicly accessible, standardized, predictable, flexible, and cost-effective methodology indicated the agency was uncertain of how to apply the CISA to any given project. The commenter stated the lack of maps and other resources depicting the FFRMS floodplain made the floodplain determination susceptible to confusion, error, and potential abuse. The commenter stated FEMA rejected the use of the 0.2PFA based on data availability, costs, and certainty for stakeholders and stated concern with FEMA moving forward with the CISA, stating that approach was supported by even less data.

Conversely, a second commenter stated the necessary data and modeling capabilities underpinning CISA have continued to expand in recent years, making CISA an increasingly practicable methodology for more accurately determining the extent of the FFRMS floodplain. The commenter wrote that FEMA should emphasize developing and deploying the necessary data to

support the use of the CISA more broadly and specifically consider and address how regional data limitations could result in inequitable outcomes if the CISA is routinely unavailable in low income, rural, Tribal, or otherwise underserved communities.

Two other commenters requested that FEMA provide mapping depicting the FFRMS floodplain. One commenter specifically requested mapping reflecting the CISA. One of the commenters noted the importance of mapping to identify all 3.5 million miles of floodplains associated with streams, rivers, and coastlines. This commenter recommended FEMA create maps with as much coverage as possible by considering incorporating data from areas with Base Level Engineering (BLE) in additional areas with detailed flood studies, when possible. The commenter stated this was the best way to ensure consistent, accurate CISA use.

FEMA Response: FEMA disagrees with the commenter that there are not sufficient resources depicting the floodplain, floodway, the 1 percent annual chance floodplain, or the 0.2 percent annual chance floodplain for all regions of the country. The commenter acknowledges further in their own comment that such resources currently exist for the 1 percent annual chance floodplain when stating the wide availability and certainty of FEMA's FIRMS. While regulatory mapping products may not exist depicting all of the areas referenced by the commenter, floodplain determinations under part 9 are not solely predicated on existing FIRMS. Rather, FEMA will use best available information, which may include information that is non-regulatory or FEMA preliminary flood hazard data. To be designated as the best available information, the information must be at least as restrictive as information provided by effective FIRMS per FEMA's best available information policy.¹⁸⁵ Given this policy, the agency will be continuously improving the data associated with the floodplain determination. FEMA's regulatory mapping products are a starting point for the floodplain determination under part 9 and any other flood information used should be at least as restrictive as those regulatory products.

Further, while there are no regulatory mapping products depicting the FFRMS floodplain, FEMA believes the

information provided in the public docket with this rulemaking is sufficient to establish the FFRMS floodplain. Specifically, the FFRMS CISA State of the Science Report and the FFRMS Job Aid are resources to determine the FFRMS floodplain. Using the FFRMS Job Aid, FEMA can determine the FFRMS floodplain relevant to a particular location within approximately 23 minutes.

While FEMA appreciates that the commenter seeks to make the floodplain determinations, the agency has historically made and will continue to make floodplain determinations under part 9 by partnering with applicants in the 8-step decision-making process. FEMA will make the floodplain determination leveraging the FFRMS Job Aid published on the agency's website and in the public docket of this rulemaking. The FFRMS Job Aid is a resource for FEMA and applicants that details the methodology and process by which the FFRMS floodplain can be determined for the CISA, FVA, and 0.2PFA. FEMA further notes that the commenter's concerns regarding the floodplain determination are only a part of the analysis at Step 1 of the 8-step process. The determination in Step 1 is not just whether or not an action is located within a floodplain or wetland but is also whether the action would impact the floodplain or wetland.

FEMA will continue to rely on 44 CFR 9.7, FEMA Policy 104-008-2: Guidance on the Use of Available Flood Hazard Information,¹⁸⁶ and the Revised Guidelines in determining whether CISA and flood hazard data is available and actionable. The FFRMS CISA State of the Science Report is based on the Revised Guidelines and further refines the initial framework from Appendix H to define two specific workflows for applying CISA. The FFRMS CISA State of the Science Report identifies the latest sea level rise projections from the National Climate Assessment as available and actionable data for CISA.¹⁸⁷ FEMA understands the commenter's concerns in seeking a simplified resource that depicts the FFRMS floodplain and is coordinating across the federal government to develop additional tools beyond the FFRMS Job Aid to assist agencies and stakeholders in determining the appropriate vertical flood elevation and corresponding horizontal FFRMS floodplain. FEMA will continue to

¹⁸⁵ See FEMA Policy 104-008-2: Guidance on the Use of Available Flood Hazard Information, available at https://www.fema.gov/sites/default/files/2020-04/Available_Flood_Hazard_Information_Policy_104-008-2.pdf (last accessed Mar. 20, 2024).

¹⁸⁶ Available at https://www.fema.gov/sites/default/files/2020-04/Available_Flood_Hazard_Information_Policy_104-008-2.pdf (last accessed Jan. 24, 2024).

¹⁸⁷ FFRMS CISA State of the Science Report, pgs. 22-23.

collaborate across the Federal government to develop tools to facilitate the implementation of CISA and the FFRMS. The IWG recently released a beta version of the Federal Flood Standard Support Tool (FFSST), a novel, interactive, map-based tool that incorporates new data to help users identify if a Federally funded project is in the FFRMS floodplain, for comment.¹⁸⁸ However, FEMA will initially rely on the FFRMS Job Aid methodology to determine the FFRMS floodplain.

The commenter incorrectly characterizes FEMA's request for comment as an indication that the agency is unable to apply the CISA. As explained above and throughout this final rule, FEMA is leveraging the resources provided in the public docket of this rulemaking to implement the FFRMS. As part of the NPRM, FEMA sought public comment to gauge the public's understanding of CISA and implementation of the FFRMS using the CISA, including locally available CISA data and methods. FEMA is collaborating across the Federal government to develop resources to further assist with FFRMS implementation beyond the FFRMS Job Aid provided in the rulemaking docket, the public comments requested will help the agency through work with the IWG to enhance the Job Aid and other interagency resources. Additionally, FEMA sought public comment to engage more dialogue on data availability and actionability beyond Federal interagency resources for FFRMS implementation.

FEMA further disagrees with the first commenter that the CISA is supported by even less data than the 0.2PFA. FEMA's policy addresses concerns regarding the availability and actionability of CISA data by offering a flexible approach to implement either the FVA or 0.2PFA where CISA data is not available and/or actionable. Further, as the policy explains, the use of both CISA and 0.2PFA are subject to data availability. While CISA is preferred, where CISA data is not available and/or actionable, the agency will rely on the alternative approaches as detailed in the FFRMS policy.

FEMA agrees with the second commenter that since the introduction of the CISA in 2015, additional data has become available to better inform the CISA.¹⁸⁹ FEMA believes data

availability and actionability will continue to advance for the CISA in the future. Specifically, FEMA expects more data will be developed supporting broader-based application of the CISA as agencies implement the FFRMS, and this data will be considered and incorporated into future updates of the FFRMS and FEMA's implementation thereof. FEMA's policy approach is to use the CISA where available and actionable, recognizing that the data is still not available and not actionable in every location. FEMA also recognized equity concerns in the policy approach, specifically considering over- and under-building concerns for locations where the CISA may be unavailable as explained in the NPRM preamble. The Revised Guidelines recognize the importance of consideration of impacts to vulnerable populations, including those at risk to impacts of flooding due to their location or because they are overburdened, lack resources, or have less access to resources.¹⁹⁰ Consistent with these concerns, FEMA's FFRMS policy would require the lower of the FVA floodplain or the 0.2PFA floodplain for non-critical actions. FEMA believes the lower approach would help reduce the burden on communities by addressing concerns related to overbuilding, particularly in underserved communities seeking to rebound quickly and effectively from a disaster. Selecting the lower approach for non-critical actions will still result in a higher level of resilience than the current requirements under part 9, while also taking equity and cost-effectiveness considerations into account.

FEMA appreciates the concerns of the remaining commenters requesting maps that depict the FFRMS floodplain and the importance of providing maps with as much coverage as possible. FEMA understands the commenter's concerns in seeking a simplified resource such as a map depicting the FFRMS floodplain and is coordinating across the federal government to develop additional tools beyond the FFRMS Job Aid to assist agencies and stakeholders in determining the appropriate vertical flood elevation and corresponding horizontal FFRMS floodplain. The IWG recently released a beta version of the

Federal Flood Standard Support Tool (FFSST), a novel, interactive, map-based tool that incorporates new data to help users identify if a Federally funded project is in the FFRMS floodplain, for comment.¹⁹¹ However, FEMA will initially rely on the FFRMS Job Aid methodology to determine the FFRMS floodplain.

2. Methodology

Comments: FEMA received questions regarding the CISA floodplain determination methodology. Commenters stated the NPRM did not specify how FEMA would determine the best-available, actionable climate science data and methods for the CISA, stating the agency also did not explain how it would select, evaluate, and update the data and methods that inform the CISA. One commenter asked what sources of data and methods FEMA would use; how FEMA would account for uncertainty and variability in climate projections; and how often FEMA would update the data and methods to reflect new scientific findings. One commenter requested information on the methods FEMA would use prior to selecting data and asked whether state agencies, floodplain managers, and other stakeholders would have an opportunity to inform what best aligned with on-the-ground realities. Both of these commenters asked how FEMA would communicate the data and methods to stakeholders and the public.

One commenter raised concerns that the CISA was still emerging and stated the overall approach would be overly conservative. Similar to other comments described earlier in this summary, this commenter asked who would make the determination to accept the science used for CISA and which projections would be applicable for design life and risk aversion of the structure. This commenter noted the FFRMS did not mention how recent the local climate study needed to be for the CISA and stated that regulatory agencies choose to enforce the most extreme flood events. The commenter recommended FEMA provide guidance for how to use climate projection data for development of unsteady hydraulic models which would be required to determine rate of rise of floodwater and durations.

Another commenter provided several specific recommendations regarding actionable model criteria for the CISA including that the models be well-established in practice; not extrapolate results; display information on uncertainty; are well-calibrated; provide outputs that are understandable; and be

2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed Jan. 24, 2024), <https://www.fema.gov/floodplain-management/intergovernmental/white-house-flood-resilience-interagency-working-group> (last accessed Jan. 24, 2024), and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0007>.

¹⁹⁰ See Revised Guidelines, pg. 67.

¹⁹¹ 89 FR 25674 (Apr. 11, 2024).

¹⁸⁸ 89 FR 25674 (Apr. 11, 2024).

¹⁸⁹ See "Federal Flood Risk Management Standard Climate-Informed Science Approach (CISA) State of the Science Report," available at <https://www.whitehouse.gov/wp-content/uploads/>

evaluated via peer-review. The commenter recommended that FEMA provide additional clarity as to what standard of peer review would be considered efficacious when producing future flood risk models, and that FEMA follow up with entities peer reviewing models to confirm that this standard has actually been met. This commenter encouraged the use of a consistent and accurate methodology for determining the FFRMS floodplain across the Federal government. The commenter stated that where CISA data was not available, utilizing the 1 percent annual chance floodplain and the 0.2 percent annual chance floodplain would be appropriate, as those are well understood and adopted for regulatory purposes under the NFIP, as well as the mortgage and insurance industries broadly.

Another commenter stated the lack of transparency in the FFRMS floodplain determination data raised concerns similar to concerns raised regarding proprietary tools used in the implementation of FEMA's Risk Rating 2.0. The same commenter stated proprietary tools would make it difficult to assess whether a CISA floodplain determination was appropriate for local conditions for a specific action and stated national-scale, one-size-fits-all tools would not be readily applicable to project sites in every location, including rural states. The commenter requested FEMA commit to bringing in State and local stakeholders to provide their perspectives.

FEMA Response: FEMA believes the information provided in the rulemaking docket addresses the commenters' concerns regarding how the agency will select, evaluate, and update the data and methods that inform the CISA and account for uncertainty and variability in climate projections. As explained above, the FFRMS CISA State of the Science Report and FFRMS Job Aid provide the public with information on the best available and actionable data for the CISA and the methodology the agency intends to initially use to determine the FFRMS floodplain using the CISA. The FFRMS CISA State of the Science Report and the Revised Guidelines provides details on how the agency will determine the availability and actionability of data for the CISA. The FFRMS Job Aid provides the methodology and process FEMA will use, based on those resources, to determine the FFRMS floodplain.

As explained above, FEMA makes the determination for Step 1 of the 8-step process, in coordination with applicants, and will work with State agencies, floodplain managers, and

other stakeholders during this process to best understand the on-the-ground realities. Pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be used in lieu of the FFRMS. This includes the use of local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data result in a more restrictive standard. FEMA notes that the agency did communicate information on the data and methodology to determine the FFRMS floodplain to stakeholders and the public with this rulemaking by providing the FFRMS CISA State of the Science Report and FFRMS Job Aid in the public docket. FEMA will provide additional resources to SLTTs and the public and will offer technical assistance regarding the FFRMS floodplain determination as part of the FFRMS implementation. FEMA disagrees with the commenter that agencies choose to enforce the most extreme flood events; the CISA is based on the best available and actionable data, not the most extreme scenarios.

With respect to the comment suggesting that FEMA support a consistent and accurate methodology for determining the FFRMS floodplain across the Federal government, FEMA supports the development of interagency tools because such tools enhance predictability and mitigate transaction costs associated with floodplain determinations. FEMA has prioritized the use of such tools in its policy approach and will initially implement the CISA using the FFRMS Job Aid. FEMA's interagency consultative role in the broader implementation of the FFRMS across the Federal government, through the agency's participation in the Flood Resilience IWG and the FIFM-TF, helps ensure consistent and effective implementation. FEMA's FFRMS policy further provides details on how FEMA will coordinate with other agencies when implementing actions in the same area as another Federal agency. See Section H, page 9. At the same time, there is no requirement in the FFRMS or the Revised Guidelines for all Federal agencies to select the same approach or to implement the CISA with the same tools; the FFRMS is a resilience standard and is meant to be flexible.¹⁹² Regarding the commenter's question regarding which projections would be applicable for design life and risk aversion of the structure, the FFRMS Job Aid Section 2.4.1 discusses service life including in the context of critical

actions.¹⁹³ This information should resolve the commenter's question. FEMA notes that the agency's proposed implementation of the CISA does not include incorporating climate projection data into hydraulic models (steady or unsteady).

FEMA appreciates the recommendations provided by another commenter on the actionable model criteria for the CISA. FEMA is not relying on models for the CISA implementation beyond the models already utilized to produce the agency's regulatory and non-regulatory products for the NFIP. Appendix H of the Revised Guidelines¹⁹⁴ and the FFRMS CISA State of the Science Report¹⁹⁵ provide an overall framework for assessment of data and models to determine available and actionable climate science.

FEMA agrees with this commenter that, where CISA data is not available and not actionable, the agency will rely on the alternative approaches as detailed in FEMA's FFRMS policy. Section C.3 of FEMA's FFRMS policy states that FEMA will determine the FFRMS elevation and the FFRMS floodplain depending on the criticality of the action. For non-critical actions, the FFRMS floodplain is the area that would be inundated by the lower of the 0.2 percent annual chance flood or 2 feet of freeboard above the BFE. For critical actions, the FFRMS floodplain is the area that would be inundated by the higher of the 0.2 percent annual chance flood or 3 feet of freeboard above the BFE. For locations where information about the elevation and/or extent of the 0.2 percent annual chance floodplain is not available, the FFRMS floodplain is 3 feet of freeboard above the BFE. To clarify, the FVA relies on the 1 percent annual chance floodplain but incorporates an additional measure of safety beyond the 1 percent annual chance floodplain. If available 0.2 percent annual chance floodplain data is not available, FEMA will utilize the appropriate FVA to determine the FFRMS floodplain and elevation.

Finally, FEMA believes the interagency tools used for FFRMS implementation have been transparent in nature. The tools FEMA will utilize to implement the FFRMS are not proprietary. FEMA, as a co-chair of the Flood Resilience IWG, under the National Climate Task Force, facilitated the publication of both the FFRMS Job

¹⁹³ See FFRMS Job Aid, pg. 14.

¹⁹⁴ See Revised Guidelines, pgs. 16–17, 50–52.

¹⁹⁵ See FFRMS CISA State of the Science Report, pgs. 7–8.

¹⁹² See Revised Guidelines, pg. 57.

Aid¹⁹⁶ and FFRMS CISA State of the Science Report.¹⁹⁷ The FFRMS Job Aid helps federal agencies and their non-federal partners (including potential federal financial aid recipients) conduct a screening to determine if a proposed federally funded action will be located within an FFRMS floodplain, based on any of the three approaches in accordance with Sec. 2(a)(1) of Executive Order 11988, as amended. FEMA will initially utilize the FFRMS Job Aid to make these determinations, and this resource was posted in the public docket of this rulemaking for transparency to the public. As explained above, FEMA makes the determination for Step 1 of the 8-step process, in coordination with applicants, and will work with State and local communities during the 8-step process. FEMA will accept local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data result in a more restrictive standard and will help further ensure local needs are met.

Comment: One commenter requested FEMA specify which NOAA sea level rise (SLR) scenario the agency would consider as the minimum standard to apply the CISA to HMA grant project benefit-cost analysis (BCA) and designs. The commenter also requested FEMA specify under what conditions it would allow higher SLR scenarios to be used, stating the lack of clarity would result in slowdowns and inconsistency in application reviews across FEMA regions and projects. The commenter requested FEMA clarify whether the agency would defer to applicant or State policies that may incorporate higher projections and otherwise meet the criteria for the CISA.

FEMA Response: FEMA is not codifying the specific climate scenarios to be used as part of the CISA analysis. As explained above, FEMA is relying on interagency processes to select and evaluate the data and methods used to implement the FFRMS. In the proposed rule, FEMA referred readers to the

FFRMS Job Aid and the FFRMS CISA State of the Science Report, which were posted to the public docket associated with this rulemaking.¹⁹⁸ FEMA has also posted the FFRMS Job Aid on its website¹⁹⁹ and will leverage this tool when implementing the FFRMS. Consistent with the FFRMS Job Aid, FEMA will use the intermediate scenarios for non-critical actions and intermediate-high scenarios for critical actions using the SLR data from NOAA.²⁰⁰

In response to the commenter's concerns regarding the use of higher SLR scenarios and whether FEMA would accept higher standards, 44 CFR 9.11(d)(6) provides that a more restrictive Federal, State, or local standard will be used in lieu of the FFRMS. Thus, if a more restrictive State or local standard relied on a higher SLR scenario, that more restrictive standard would be used. FEMA notes the determination on the information the applicant is using under part 9 has always been made by the agency and thus, FEMA does not anticipate delays with projects as a result of the FFRMS implementation.

Comment: A commenter stated that FEMA's policy approach was not straightforward, as the boundaries and elevations for both the FVA and 0.2PFA must be identified for each project and then compared to establish the final floodplain but stated there was little information on how those boundaries and elevations would be determined. Similar to other commenters above, the commenter asked who would conduct the analysis, what data would be used, and what ground-truthing if any would be performed. The commenter stated this must be determined prior to FFRMS implementation. This commenter stated CISA's application was not understood nor was it likely to be consistent given the significant leeway provided to the Regional Administrators. The commenter requested FEMA explain how the agency would choose the FFRMS approach it would take, what data the agency would rely on, and provide publicly available maps depicting the regulated floodplain (whether that floodplain was determined based on the 1 percent annual chance floodplain, the 0.2 percent annual chance floodplain, or using the CISA, FVA, or any other

methodology). The commenter stated the FFRMS was otherwise premature, and FEMA should cease implementation until these efforts were complete.

FEMA Response: FEMA understands the commenter's concern that both the FVA and 0.2PFA will be identified where the CISA is not available and/or actionable. However, FEMA does not believe this analysis will be overly burdensome to the agency or to applicants. FEMA has made, and will continue to make, floodplain determinations partnering with applicants in the 8-step decision-making process. The FFRMS Job Aid provides the methodology and process by which the FVA and 0.2PFA can be determined. This document is publicly available on FEMA's website and was posted to the public docket with this rulemaking. Using the FFRMS Job Aid, FEMA can determine the FFRMS floodplain relevant to a particular location within approximately 23 minutes.

FEMA disagrees with the commenter that the CISA's application is not understood nor likely to be consistent given the resources provided with this rulemaking as detailed above. The FFRMS CISA State of the Science Report and the FFRMS Job Aid help Federal agencies and the public better understand the CISA, the availability and actionability of the CISA data, and how to determine the FFRMS floodplain using the CISA, FVA, and the 0.2PFA. FEMA does not agree with the commenter that FFRMS implementation, including the CISA, will result in inconsistency. FEMA does not believe Regional Administrators are provided with a level of discretion to result in inconsistent FFRMS implementation. Regional Administrators have historically had the authority provided in 44 CFR 9.7, and FEMA is not changing their authority with this rule.

FEMA notes that the agency explains how it will choose the FFRMS approach to be taken in the FFRMS policy. Section C.3 of the FFRMS policy states FEMA will determine the FFRMS elevation and the FFRMS floodplain depending on the criticality of the action. For non-critical actions, where the CISA is not available, the FFRMS floodplain is the area that would be inundated by the lower of the 0.2 percent annual chance flood or 2 feet of freeboard above the BFE. For critical actions, where the CISA is not available, the FFRMS floodplain is the area that would be inundated by the higher of the 0.2 percent annual chance flood or 3 feet of freeboard above the BFE. For locations where information about the

¹⁹⁶ See https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024) and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

¹⁹⁷ Available at https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed Jan. 24, 2024), <https://www.fema.gov/floodplain-management/intergovernmental/white-house-flood-resilience-interagency-working-group> (last accessed Jan. 24, 2024), and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0007>.

¹⁹⁸ See <https://www.regulations.gov/document/FEMA-2023-0026-0004>.

¹⁹⁹ See https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024).

²⁰⁰ FFRMS Job Aid, pgs. 20–21. NOAA viewer available at <https://coast.noaa.gov/slr/> (last accessed Mar. 28, 2024).

elevation and/or extent of the 0.2 percent annual chance floodplain is not available, the FFRMS floodplain is 3 feet of freeboard above the BFE. To clarify, the FVA relies on the 1 percent annual chance floodplain but incorporates an additional measure of safety beyond the 1 percent annual chance floodplain. If available 0.2 percent annual chance floodplain data is not available, FEMA will utilize the appropriate FVA to determine the FFRMS floodplain and elevation.

As explained above, FEMA will initially rely on the FFRMS CISA State of the Science Report and the FFRMS Job Aid to implement the FFRMS. FEMA appreciates the desire to have maps depicting the FFRMS floodplain and is coordinating across the Federal government to develop additional tools beyond the FFRMS Job Aid to assist agencies and stakeholders in determining the appropriate vertical flood elevation and corresponding horizontal FFRMS floodplain. However, FEMA will initially rely on the FFRMS Job Aid methodology to determine the FFRMS floodplain. Given the agency made resources publicly available on this rulemaking docket to determine the FFRMS floodplain, FEMA does not believe delaying the FFRMS implementation is needed. Flood risk is not static and will evolve over time due to changing conditions. Particularly in the context of Federal grantmaking, FEMA does not believe it would be appropriate to delay FFRMS implementation pending a comprehensive FFRMS floodplain mapping of the United States. The decision to proceed in this matter is also consistent with FEMA's historical practice of using best available information in the 8-step process, which also resulted in some degree of uncertainty as part of the project planning and application process.

Comment: A commenter noted the key language of "best available" and "actionable" in the definition of the CISA as determining the reliability, usability, and overall credibility of the final floodplain identification. The commenter noted FEMA's consistent use of the terminology and the definitions found in Appendix H of the Revised Guidelines. The commenter agreed with the terminology but recommended the inclusion of granularity, stating that climate-informed flood risk granular data is property-specific data. The commenter stated granular data has three significant characteristics: structure specific identifications, first floor height assessments, and high-resolution digital elevation model (DEM) data. To reliably

assess future flood risk, the commenter stated FEMA must be able to both identify the property itself and the specific structure(s) on that property that require separate assessments. The commenter wrote that the identification requires geospatial data that can reliably assess the geographical boundaries of a property and its structure(s), and without this, risk assessments would not reflect the true risk to the structure. The commenter went on to explain how these assessments involved models based on underlying data inputs that reliably determine the first floor height elevation relative to sea level and ground level and require the use of DEM. The commenter stated the key to reliability is the use of high-resolution DEM, the level of granularity necessary to permit reliable assessment of first floor height elevation and related footprint data. The commenter recommended FEMA advocate for the addition of "granular" as a necessary characteristic for "best available, actionable science."

The same commenter stated that FEMA's flexible approach would likely facilitate the uptake of critical forward-looking climate and flood assessment methodologies and where those techniques and solutions needed time to develop, still accurately account for flood risk through proven approaches. The commenter stated that while a forward looking, climate-informed approach would be the best framework for understanding flood and other natural hazard risk in the future, not every community, builder, or developer is currently equipped to understand and account for that risk. As building the knowledge base would take time, the commenter recommended use of the waterfall approach proposed by FEMA's policy allowing the FFRMS floodplain to be determined using the FVA or 0.2PFA. The commenter encouraged FEMA to depict the 0.2 percent annual chance floodplain on maps consistent with the requirements of the Biggert Waters Flood Insurance Reform Act of 2012 (BW-12).

FEMA Response: FEMA appreciates the commenter's emphasis on the importance of best available, actionable science to the CISA. FEMA agrees that a determination of the location of an action and site-specific details of the action that are needed for the floodplain determination and minimization of impacts requires a variety of granular data. However, all of the science and data used to define the floodplain does not necessarily need to be granular to be actionable. For example, regional sea level rise data is considered actionable best available science in the FFRMS

CISA State of the Science Report but would not satisfy the definition of granular data provided by the commenter. FEMA will continue to use granular data, where appropriate, such as detailed digital elevation models to determine floodplain extents and first floor elevations for structures that are part of Federal actions. FEMA will further consider the commenter's request to incorporate granularity through the use of structure-specific identifications, first floor height assessments, and high-resolution digital elevation model (DEM) data as part of the agency's role in the IWG.

FEMA agrees with the commenter that, given that the best available data is not available and/or actionable in all locations, both FVA and 0.2PFA should be leveraged to determine the FFRMS floodplain. FEMA also agrees it is important to depict the 0.2 percent annual chance floodplain on community maps consistent with the requirements of BW-12.

Comment: A commenter asked whether the approaches in the FFRMS policy should be used to develop FIRMs or FIS. The commenter stated the methods listed to develop the floodplain should only apply to those actions listed in the Applicability section of the FFRMS policy.

FEMA Response: The approaches listed in section C of FEMA's FFRMS policy document for determining the FFRMS floodplain are not used to develop FIRMs or FIS. FIRMs and FIS are a starting point for the floodplain determination under the 8-step process. The approaches listed in section C of the policy are only applicable to the actions detailed in the applicability section of FEMA's FFRMS policy.

Comment: Two commenters stated that FEMA's 2016 proposed rule indicated the use of CISA was not appropriate and stated FEMA's current reliance on CISA was unsubstantiated. The commenters noted an article that expressed concerns with climate science²⁰¹ and cited statements in the FFRMS CISA State of the Science Report as evidence that attempts to apply the CISA to set flood risk management standards would be subjective. Both commenters requested transparency and adherence to the principles of replicability and independent peer review if FEMA utilizes the CISA. One of the commenters stated FEMA must adhere to a specific set of criteria to clarify the

²⁰¹ See Jesse M. Kennan, "A climate intelligence arms race in financial markets," *Science* 365 (6459), pp. 1240–1243, abstract available at <https://www.science.org/doi/10.1126/science.aay8442> (last accessed Mar. 21, 2024).

standard and that there must be metrics. The commenters stated that the other approaches provided numerical targets that define what success shall be. Both commenters stated that if FEMA could not provide decision criteria to be applied in the CISA approach, the agency should eliminate it as a standard.

FEMA Response: Since the introduction of the CISA in 2015, additional data has become available to better inform CISA. The FFRMS CISA State of the Science Report provides a recommendation on available and actionable CISA data.²⁰² Many of the concerns expressed by the commenters are further addressed in that report and explain why the CISA data is not actionable in all locations. FEMA disagrees with the commenters' suggestion that certain statements in the FFRMS CISA State of the Science Report regarding multiple scenarios and hybrid approaches that could be used to determine the CISA serve as evidence that the CISA is too subjective. The CISA guidance in Appendix H of the Revised Guidelines and the FFRMS CISA State of the Science Report provide broad guidance for where the CISA might be available and actionable with sufficient expertise, local data, and project-specific analysis. However, FEMA prioritized the type and criticality of the action involved, the availability and actionability of the data, and equity concerns, and determined that applying the CISA through complex expert project-specific modeling was not appropriate for FEMA given the agency's role in helping people recover from disasters in an expedited manner and to reduce the subjectivity concerns of the commenters stated above. FEMA instead decided to use consensus interagency approaches that were readily accessible and do not require

²⁰² The FFRMS CISA State of the Science Report identifies the latest interagency Federal guidance for regionally-based SLR projections as available and actionable by recommending that all agencies should use these data as part of a CISA approach. At pg. 22, the Report states "Federal agencies should apply this latest interagency Federal guidance for regionally-based SLR projections. Scenarios and time horizons should use a consistent national approach based on risk tolerance and criticality." However, the Report also warns against using the simplified approach with SLR in areas subject to runup and overtopping on pg. 28 "Notably, areas subject to runup and overtopping can be very sensitive to changes in water level (including due to SLR) and the variability of the slope—so within a CISA implementation, these areas should be treated with appropriate analysis and not simple linear addition of flooding components." Based on these guidelines, the FFRMS Job Aid establishes the use of simplified CISA in specific areas, namely in some coastal environments, specifically along low-lying coastal shorelines on the Atlantic and Gulf Coasts. See FFRMS Job Aid, pg. 10.

project specific CISA modeling found in the FFRMS Job Aid.

The FFRMS Job Aid details the underlying methodology used to determine the FFRMS floodplain, including using the CISA, and FEMA believes that resource provides sufficient transparency and replicability to stakeholders and the public. FEMA will initially use the FFRMS Job Aid to make the FFRMS floodplain determination. FEMA is coordinating across the federal government to develop additional tools beyond the FFRMS Job Aid to assist agencies and stakeholders in determining the appropriate vertical flood elevation and corresponding horizontal FFRMS floodplain.

FEMA does not believe that the use of CISA results in uncertainty in the 8-step process. The FFRMS Job Aid details the underlying methodology used to determine the FFRMS floodplain, including using the CISA, and FEMA believes that resource provides sufficient transparency and replicability to stakeholders and the public. The FFRMS CISA State of the Science Report, upon which the FFRMS Job Aid is based, was reviewed by subject-matter experts across the members of the Flood Resilience IWG, including staff from NOAA's National Weather Service, the USGS's Water Resources Mission Area and Coastal/Marine Hazards and Resources Program, FEMA's National Flood Hazard Mapping Program, and other members of the FFRMS Science Subgroup.²⁰³

FEMA agrees with one of the commenters that the FVA and 0.2PFA provide some additional clarity to stakeholders because the 1 percent annual chance and 0.2 annual chance floodplains are more commonly used and depicted on FEMA regulatory and non-regulatory mapping products. FEMA's FFRMS policy provides for the use of these approaches where the CISA data is not available or not actionable. However, FEMA does not believe that the CISA must be eliminated simply because the FVA and 0.2PFA are more commonly understood. The FFRMS CISA State of the Science Report and the FFRMS Job Aid are resources the public can use to better understand the CISA and how FEMA will implement it. These resources provide the requisite decision criteria for how the CISA will be determined by FEMA in the initial FFRMS implementation. FEMA will provide additional resources and technical assistance to SLTTs and the public regarding the FFRMS floodplain

²⁰³ See FFRMS CISA State of the Science Report at i.

determination as part of the FFRMS implementation to help further educate stakeholders.

3. Use of State and/or Local CISA Data

Several commenters requested FEMA consider local CISA data in making the CISA floodplain determination.

Comments: Some commenters requested the use of specific State and/or local data. One commenter stated the use of locally available CISA data and methods would provide opportunities for underserved communities to provide critical local input. One commenter recommended FEMA develop a framework for evaluating whether local CISA data is technically credible and appropriate. One commenter stated if State, Tribal, territorial, or local data resulted in CISA-based elevation standards that met or exceeded standards developed using Federal data, then FEMA should apply the higher, locally available standards, if reasonable. The commenter stated Federal data should act as a floor for CISA calculation under the FFRMS.

Another commenter stated FEMA should accept local data where it is accurate and sufficiently protective to maximize the effectiveness of the rule. The same commenter requested FEMA consider the potential inequities in access to CISA. Another commenter recommended FEMA develop a framework for evaluating whether local CISA data is technically credible and appropriate.

In addition to requesting FEMA accept local CISA data, one commenter sought additional details on the FEMA FFRMS CISA data development to avoid developing duplicative or conflicting data. The commenter stated FEMA's Federal floodplain management tools (*i.e.*, FIS and FIRMs) are used for applications beyond their originally intended purpose, including comprehensive planning and resilience planning. The commenter encouraged FEMA to consider how its CISA FFRMS data and tools could be used for comprehensive flood risk planning at multiple levels of government when developing the products. The commenter also encouraged FEMA to coordinate with stakeholders when developing its CISA data and methods. Two commenters agreed that FEMA should further engage with stakeholders regarding CISA data and methods.

FEMA Response: FEMA agrees with the commenter that Federal data should act as a floor for the CISA calculations under the FFRMS. SLTTs can provide input into the determination. Pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be

used. This includes the use of local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data results in a more restrictive standard.

FEMA notes the FFRMS Job Aid is a resource to help Federal agencies and their non-Federal partners (including potential federal financial aid recipients) conduct a screening to determine if a proposed federally funded action will be located within an FFRMS floodplain, based on the CISA, FVA, or 0.2PFA, in accordance with Sec. 2(a)(1) of Executive Order 11988, as amended. FEMA will continue to collaborate across the Federal government to develop tools to facilitate the implementation of CISA.

Regarding the framework for accepting local CISA data, FEMA will continue to rely on 44 CFR 9.7, FEMA Policy 104-008-2: Guidance on the Use of Available Flood Hazard Information,²⁰⁴ and the Revised Guidelines in determining whether CISA and flood hazard data is available and actionable. FEMA is coordinating across the federal government to develop additional tools to assist agencies and stakeholders in determining the appropriate vertical flood elevation and corresponding horizontal FFRMS floodplain.

FEMA's policy approach considers situations where CISA data is not available. Specifically, the policy approach detailed in the FFRMS Policy provides for the use of the FVA or 0.2PFA depending on the criticality of the action and data availability. FEMA believes the agency's policy approach will reduce concerns with underbuilding or overbuilding and thus provide a more cost-effective, equitable approach.

As previously explained, FEMA is relying on interagency processes to select and evaluate the data and methods used. Appendix H of the Revised Guidelines²⁰⁵ provides an overview of the available and actionable data for CISA, which is the basis for these interagency supporting tools. The FFRMS CISA State of the Science Report²⁰⁶ provides a review and update

²⁰⁴ Available at https://www.fema.gov/sites/default/files/2020-04/Available_Flood_Hazard_Information_Policy_104-008-2.pdf (last accessed Jan. 24, 2024).

²⁰⁵ Available at https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf (last accessed Jan. 24, 2024).

²⁰⁶ See https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed Dec. 14, 20 last

of the best-available, actionable science that can support application of the Climate-Informed Science Approach (CISA), reflecting science and technology advancements made since Executive Order 13690 was issued in 2015.²⁰⁷ FEMA will rely on these and future interagency publications for CISA data. The Revised Guidelines also provide an explanation of how the FFRMS will be updated in the future.

FEMA appreciates the importance of comprehensive flood risk planning and is developing additional resources for communities and the public to better understand their current and future flood risks. For example, FEMA's Future of Flood Risk Data (FFRD) initiative will provide a more comprehensive picture of the country's flood hazards and risks by leveraging new technologies to include more efficient, accurate, and consistent flood risk information across the nation.²⁰⁸ These resources can be used by communities for planning purposes. FEMA will continue to engage with SLTTs and the public on the development and enhancement of flood risk resources, including FFRMS implementation resources for the CISA, FVA, and 0.2PFA.

Comment: One commenter requested FEMA provide training resources to help local communities, practitioners, and property owners understand the impact of the rule.

FEMA Response: FEMA values additional input from SLTT partners and the public in the 8-step process. FEMA will provide additional resources to SLTTs and the public as part of the FFRMS implementation, and FEMA's regional offices will provide technical assistance to applicants for FEMA programs.

4. Other Data Concerns

Comment: One commenter stated concerns with the language in proposed § 9.7(b)(1), which stated that FEMA shall obtain enough information so that it can fulfill the requirements in part 9 to (i) avoid Federal action in floodplain and wetland locations unless they are the only practicable alternatives and (ii) Minimize harm to and within floodplains and wetlands). The commenter stated that the language was too vague to have any meaning, as "enough information" did not inform the agency or the public of the requirement. The commenter

accessed Jan. 24, 2024) and also posted to the public docket with this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0007>.

²⁰⁷ 80 FR 6425 (Feb. 4, 2015).

²⁰⁸ See <https://www.fema.gov/fact-sheet/future-flood-risk-data-ffrd> (last accessed Mar. 26, 2024).

recommended some identifiable minimum standard be provided.

FEMA Response: FEMA disagrees that the proposed language is unduly vague. In context, paragraph (b) provides that FEMA will make the determination as part of the 8-step process and provides a list of the types of information FEMA will use to make this determination including the current and future flooding characteristics detailed in paragraph (b)(3). Not all of this information is required, as the information needed to make the floodplain or wetland determination is action-specific and subject to data availability.

Comment: One commenter stated costs would increase for engineering and planning around Federally funded projects when implementing FFRMS, particularly in areas where the 0.2 percent floodplain is not currently mapped.

FEMA Response: FEMA appreciates the commenter's concerns regarding costs but disagrees that engineering and planning costs will necessarily increase for actions subject to the FFRMS and particularly for those in areas where the 0.2 percent annual chance floodplain is not currently mapped. FEMA will initially implement the FFRMS using the FFRMS Job Aid to determine the FFRMS floodplain and stakeholders can also leverage this tool to determine the CISA, FVA, and 0.2PFA where such data is available. As FEMA's FFRMS policy states, where the CISA data is not actionable and not available and information about the elevation and/or extent of the 0.2 percent annual chance floodplain is also not available, the FFRMS floodplain is the FVA. By considering data availability in the FFRMS floodplain determination and providing resources to help stakeholders understand the FFRMS floodplain determination, FEMA believes the commenter's concerns are addressed.

Further, FEMA considered the costs and benefits associated with this rule, including the overall increased costs of FEMA projects, in the regulatory impact analysis provided on the docket.²⁰⁹ FEMA believes that the benefits of preventing property damage, protecting Federal investments, and potentially saving lives justify the costs of the rule. These benefits are a result of the improved protection of structures and facilities due to increased elevation and floodproofing standards in FEMA's implementation of the FFRMS. This rule will help to ensure that Federal investments are better protected from

²⁰⁹ See <https://www.regulations.gov/document/FEMA-2023-0026-0013>.

flood damage, and that the natural and beneficial values of floodplains are preserved. FEMA notes any increased costs are generally eligible for funding under FEMA's assistance programs subject to cost share requirements.

FEMA's Regulatory Mapping Products

Comments: Some commenters requested clarification on the use of current FEMA regulatory products in the FFRMS floodplain determination. Commenters provided input asking FEMA to improve those maps for the FFRMS floodplain determination and other purposes. One commenter requested FEMA update the agency's floodplain mapping techniques and incorporate future risk into the mapping. The commenter recommended FEMA incorporate the recommendations by the TMAC for significant changes to FEMA's floodplain mapping techniques. The commenter requested all agencies collaborate and align around definitions for floodplain mapping and share expertise to develop CISA floodplain definition methods that are consistent with one another. Such consistency would be easier and assist applicants in adhering to agency regulations. The commenter further recommended the MitFLG work toward common definitions and delineation of floodplains to enable better interagency collaboration and coordination on issues related to flood risk reduction. The commenter also stated the need to improve and update FEMA's regulatory mapping products, indicating these products were essential for community-level planning, yielding enhanced resilience. The commenter stated flood maps were essential underpinning to drive wise land use decisions, including where not to develop and where to conserve lands that might aid in flood risk reduction.

Another commenter stated the FFRMS did not consider FIRM effective dates in communities where FIRMs are currently being updated and requested clarification for applying the CISA to those communities or applicable use of effective flood maps. One commenter noted FEMA's policy approach to leverage the 0.2PFA or FVA where CISA data is not available and not actionable and stated that approach was not without challenges given FEMA's regulatory and other mapping products used in the analysis of those approaches were outdated and likely to remain so for the foreseeable future.

A commenter recommended Federal agencies continue relying on FEMA flood risk data and tools for future implementation of a climate-informed

floodplain. The commenter noted FEMA's investment on flood engineering studies and flood mapping over the past half century and that States and localities nationwide adopted FEMA flood map data for flood mitigation, community development, and many other purposes. The commenter stated that abandoning current Federal efforts on flood mapping and adopting an alternative flood map dataset would waste Federal investments on flood engineering studies and flood inundation mapping. Another commenter stated FEMA would have the primary responsibility to prepare the data to support the CISA through its existing mapping activities. The commenter noted other FEMA mapping priorities through the agency's RiskMAP program and encouraged FEMA to secure and allocate sufficient resources and fully utilize the Cooperating Technical Partners program to support the CISA and related mapping activities.

FEMA Response: FEMA appreciates the commenters' interest in the agency's flood risk mapping efforts. FEMA is considering the TMAC recommendations associated with future flood conditions mapping and intends to incorporate future flood conditions into mapping products as practicable.²¹⁰ FEMA's interagency consultative role in the broader implementation of the FFRMS across the Federal government, through the agency's participation in the IWG and the FIFM-TF helps ensure consistent and effective implementation. FEMA will continue to work in an interagency manner in conjunction with the Water Resources Council, the MitFLG, and the FIFM-TF to develop tools to facilitate the implementation of CISA. FEMA agrees that the agency's regulatory mapping products support community-level planning that enhances resilience and help drive wise land use decisions.

FEMA understand other commenters' concerns regarding FIRM effective dates and the age of FIRMs in some communities that may no longer reflect current flood risk. FEMA plans to continue updating regulatory mapping products to help address the commenter's concerns regarding stale maps. However, floodplain determinations under part 9 are not solely predicated on existing FIRMs and commenters' concerns about potential challenges with the FVA and 0.2PFA based on the age of existing FIRMs is

²¹⁰ See TMAC 2021 Annual Report, Chapter 3 Future Conditions available at https://www.fema.gov/sites/default/files/documents/fema_2021-technical-mapping-advisory-annual-report.pdf (last accessed Apr. 1, 2024).

thus unwarranted. As explained in the NPRM, FEMA will use best available information which may include information that is non-regulatory or FEMA preliminary flood hazard data. To be designated as the best available information, it must be at least as restrictive as information provided by effective FIRMs. Given the best available information policy FEMA adopted,²¹¹ the agency will be continuously improving the data associated with the floodplain determination. FEMA notes pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be used in lieu of the FFRMS. Communities can leverage their own data, including the use of local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data results in a more restrictive standard. FEMA believes these flexibilities address the second commenter's concerns to ensure the best available flood risk information is being considered in the 8-step analysis.

FEMA notes that, as explained above, the agency is not abandoning current efforts on flood mapping but rather is continuing to update regulatory maps. FEMA is not adopting an alternative flood map dataset as part of this rulemaking. Regulatory mapping products are part of the NFIP's regulatory process and not impacted by this rulemaking. The agency's investments in regulatory mapping products are not being wasted by this effort and will continue in support of the NFIP's regulatory process, as well as to inform the public on flood risk. FEMA further appreciates the commenter's concern regarding sufficient resources and will continue to utilize the Cooperating Technical Partners program to support the agency's mapping efforts.

Comment: A commenter wrote their support for modernizing the data and approaches used to understand and anticipate flood risks, stating the use of best available data, technology, and modeling would yield better baseline data to account for climate-induced increases in precipitation and inundation. The commenter noted that data from FIRMs in some areas can be 40 years old. The commenter noted that FEMA predicted more accurate maps would expand the floodplain but stated adjustments were needed to ensure the expanded mapping does not further hinder Federal, State, and local efforts

²¹¹ FEMA Policy 104-0008-2: Guidance on the use of available flood hazard information, available at https://www.fema.gov/sites/default/files/2020-04/Available_Flood_Hazard_Information_Policy_104-008-2.pdf (last accessed Mar. 27, 2024).

to restore natural and beneficial floodplain functions.

FEMA Response: FEMA does not anticipate that more accurate mapping of current flood risks will necessarily expand the floodplain. FEMA's experience when revising existing regulatory floodplains is that the overall floodplain area does not generally increase, as more accurate maps can also mean areas are no longer designated as being within the floodplain. While revised maps reflect updated data on inland hydrology, coastal storms, and sea levels, they focus on current conditions and do not include projections of future changes. FEMA does anticipate the FFRMS, when implemented, will generally expand the floodplain area for actions subject to the FFRMS under part 9. FEMA agrees with the commenter that leveraging the best available information in making the floodplain determination can assist in accounting for climate-induced increases in precipitation and inundation. As explained above, FEMA plans to continue updating regulatory mapping products to address the commenter's concerns with dated data; however, floodplain determinations under part 9 are not solely predicated on existing FIRMs. FEMA will use best available information which may include information that is non-regulatory or FEMA preliminary flood hazard data. To be designated as the best available information, it must be at least as restrictive as information provided by effective FIRMs. FEMA does not believe implementation of the FFRMS will hinder restoration of natural and beneficial floodplain functions. Rather, it is also the policy of FEMA to restore and preserve the natural and beneficial values served by floodplains in part 9.

Comment: One commenter requested clarification on how allowing the use of other data beyond the data found in FIRMs or FIS would affect the CLOMR, LOMR, No Adverse Effect, No Rise processes.

FEMA Response: This rulemaking does not have any impact on the current CLOMR, LOMR, or no rise processes. FEMA does not have a no adverse effect process.

Interagency Tools

Comments: Some commenters requested additional information regarding the interagency tools FEMA will utilize to depict the FFRMS floodplain. A commenter wrote in support of developing a decision support tool to facilitate the implementation of the FFRMS, requesting the tool be narrowly focused,

integrating and avoiding duplication of existing Federal tools and data portals. The commenter also requested the tool incorporate local data wherever possible and that FEMA use the tool to highlight data gaps preventing the wider use of CISA to encourage development of such data in those areas. Another commenter wrote requesting FEMA work closely with NOAA, the White House Office of Science and Technology Policy, and other appropriate departments to ensure that States, communities, and the public can readily access information about what data sources meet the criteria for climate-informed science and are considered current and credible at a point in time. Two commenters noted appreciation for FEMA's work with the Flood Resilience IWG on developing an online mapping tool to assist in determining the FFRMS floodplain, including the CISA and requested prioritizing these efforts.

FEMA Response: FEMA appreciates the commenters' support of the agency's interagency collaboration and is continuing to work with IWG to support the FFRMS and CISA implementation. FEMA also appreciates the commenters' statements on developing additional tools to support the FFRMS implementation across the Federal government. FEMA agrees with the commenter that a tool to facilitate FFRMS implementation is an important component to the success of the FFRMS, and the agency published on the public docket with this rulemaking the FFRMS Job Aid as an initial resource. FEMA anticipates leveraging the FFRMS Job Aid for determining the FFRMS floodplain when the final rule is implemented. FEMA will continue to collaborate across the Federal government to develop tools to facilitate the implementation of CISA and the FFRMS. The IWG recently released a beta version of the Federal Flood Standard Support Tool (FFSST), a novel interactive, map-based tool that incorporates new data to help users identify if a Federally funded project is in the FFRMS floodplain, for comment.²¹² FEMA will also continue to rely on 44 CFR 9.7, FEMA Policy 104-008-2: Guidance on the Use of Available Flood Hazard Information,²¹³ and the Revised Guidelines in determining whether CISA and flood hazard data is available and actionable.

²¹² 89 FR 25674 (Apr. 11, 2024).

²¹³ Available at https://www.fema.gov/sites/default/files/2020-04/Available_Flood_Hazard_Information_Policy_104-008-2.pdf (last accessed Jan. 24, 2024).

Flooding Characteristics

Comment: One commenter requested FEMA retain the requirement that Regional Administrators identify additional flooding characteristics in the locations of proposed actions. The commenter noted FEMA's changes in 44 CFR 9.7(b)(3) from "shall" to "may" identify such flooding characteristics, "as appropriate" and requested "shall" be retained, as the flooding characteristics identified included important factors to consider when minimizing harm to floodplains and wetlands. The commenter stated there was no adequate rationale for allowing the Regional Administrator to ignore any or all of the flooding characteristics. The commenter also requested FEMA include "evacuation and migration corridors for wildlife, including threatened and endangered wildlife" in the list of flooding characteristics.

FEMA Response: FEMA appreciates the commenter's concerns but does not believe this language change is a change impacting how FEMA will review the flooding characteristics. Rather, the edit from "shall" to "may" is a clarifying edit. As explained in the preamble to the NPRM, the term "shall" suggests a mandatory requirement for the Regional Administrator to identify all of the additional flooding characteristics listed, yet the current qualifying "as appropriate" language suggests the identification was not mandatory. FEMA's current practices do not mandate a review of each of the flooding characteristics but rather only those that are appropriate. FEMA updated this language to reflect the Regional Administrator's discretion in identifying the appropriate flooding characteristics consistent with current practices.

FEMA also appreciates the importance of wildlife and the commenter's concerns about their habitats and evacuation and migration corridors; however, wildlife concerns are currently part of the flooding characteristics considered when determining the floodplain. The definition of "natural and beneficial values of floodplains and wetlands" addresses wildlife considerations, and FEMA does not believe the additional language proposed by the commenter is required to ensure this analysis.

Comment: Another commenter requested FEMA give local communities a voice in the method used to determine the appropriate vertical flood elevation stating Federal agencies may not be familiar with the local conditions. The commenter gave an example of areas with flash floods requiring an appropriately short rainfall interval be

evaluated to avoid missing the storm peak.

FEMA Response: FEMA has and will continue to consider flooding characteristics such as those listed by the commenter consistent with § 9.7. FEMA notes that communities provide input into the floodplain determination for part 9 and the agency coordinates with applicants and State and local officials as appropriate throughout the 8-step process. As explained above, pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be used. This includes the use of local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data results in a more restrictive standard. Projects subject to the FFRMS will continue to be designed to meet local needs as appropriate.

Best Available Information

Comment: Four commenters requested FEMA recognize the value of Indigenous Knowledge and Tribal resources in the 8-step process. One commenter supported the proposed range of data sources to ensure FEMA relies on the best available information when determining flood risk but requested FEMA incorporate Indigenous Knowledge when considering best available information for determining flood risk. The commenter noted the Biden Administration's guidance to Federal agencies to increase reliance on Indigenous Knowledge to inform Federal decision-making and recommended FEMA incorporate the use of such information in the final rule. Specifically, the commenter requested FEMA revise § 9.7(c)(3)(ix) to read "State, Regional, and Tribal Agencies or governing bodies," add a new § 9.7(c)(3)(xi) to identify Indigenous Knowledge as another source of high-quality information and seek opportunities for engagement and promotion of best practices to include Indigenous Knowledge in FEMA decision making. A second commenter provided similar feedback, supporting the expanded inclusion of diverse data sources and requesting FEMA integrate Indigenous Knowledge into the final rule while also continuing to collaborate with Tribal Nations and Indigenous Peoples to incorporate Indigenous Knowledge into FEMA policies. A third commenter supportive of incorporating Indigenous Knowledge into the 8-step process recommended the final rule direct FEMA to seek input from local Indigenous communities when developing alternatives to an action and assessing impacts. This commenter noted that these communities may have

unique, proven methods for reducing flood risk and incorporating this knowledge would recognize Indigenous connections to the land and help produce better-informed decisions.

Another commenter requested FEMA align with States and Tribes on data practices. Consistent with other commenters above, this commenter requested FEMA consider State, Tribal, territorial, or local CISA-based elevation standards data that met or exceeded standards developed using Federal data. The commenter stated FEMA should apply the higher, locally-available standards if reasonable. The commenter provided an example of State SLR guidance using State data, requesting that FEMA allow us of this data so long as it met or exceeded the Federal data. The commenter stated that Federal data should act as a floor for CISA calculation under the FFRMS and that if reasonable, locally available data meets or exceeds the floor set by Federal data, then it should be accepted for implementation consistent with FEMA's proposed approach to leverage the best available data to inform flood risk. The commenter noted the incorporation of local data and methods can provide opportunities to achieve higher resolution data and in-depth understanding of contextual climate impacts. The commenter requested FEMA encourage intergovernmental and interstate collaboration to share and improve best practices for underlying local data collection, including agency guidance on expanding locally available data.

FEMA Response: As one commenter stated, President Biden issued Federal government-wide guidance on recognizing and including Indigenous Knowledge in Federal research, policy, and decision making.²¹⁴ FEMA agrees with the commenters on the importance of Indigenous Knowledge in the 8-step process. FEMA agrees with the commenter to ensure Tribes are specifically incorporated into § 9.7(c)(3)(ix) and is updating this final rule to state, "Agencies of State, Regional, and Indian Tribal Governments." This edit will ensure consideration of Indian Tribal government data in the floodplain determination. FEMA believes the current language in § 9.7(c)(3)(x) regarding local sources covers those Tribes that are not considered to be an

²¹⁴ See "Implementation of Guidance for Federal Departments and Agencies on Indigenous Knowledge," Nov. 30, 2022, found at <https://www.whitehouse.gov/ceq/news-updates/2022/12/01/white-house-releases-first-of-a-kind-indigenous-knowledge-guidance-for-federal-agencies/> (last accessed Jan. 24, 2024).

Indian Tribal government under 42 U.S.C. 5122(6).

FEMA supports the inclusion of Tribal and Indigenous knowledge into the FFRMS process. As requested by the second commenter, FEMA is integrating Indigenous Knowledge into the FFRMS policy accompanying this rule. The agency will collaborate with Tribal Nations and Indigenous Peoples to incorporate Indigenous Knowledge into FEMA policies consistent with the guidance referenced above. FEMA further agrees with the third commenter that local Indigenous communities may have methods for reducing flood risk that recognize Indigenous connections to the land and help produce better-informed decisions. To ensure input from local communities, FEMA follows the process for early and final public notices in the 8-step process. See §§ 9.8(c)(4) and 9.12. The current regulatory text incorporates notice to Tribes when effects may occur on Tribal lands in the early public notice process. See § 9.8(c)(4)(ii). The final public notice includes notification to any entity that received early public notice. See § 9.12(a). These notifications give Tribal communities the ability to provide input on alternatives and impacts in the 8-step process. This ensures consideration of Tribal and Indigenous Peoples throughout the 8-step process.

Finally, FEMA agrees with the fourth commenter that Federal data should act as a floor for CISA calculations under the FFRMS. FEMA will apply higher, locally available standards consistent with § 9.11(d)(6) that requires a more restrictive Federal, State, or local standard be used. This includes the use of local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data results in a more restrictive standard. FEMA agrees with the commenter that locally available data can provide valuable input into the area's climate impacts and will leverage those higher standards adopted by communities. FEMA values additional input from SLTT partners and the public in the 8-step process and will continue to engage by providing additional resources and technical assistance as the FFRMS is implemented.

Comment: One commenter requested FEMA include examples of "other sources" in § 9.7(c)(iii).

FEMA Response: FEMA provides a list of other sources in § 9.7(c)(3)(i)-(x) of this final rule. As explained above, the agency will provide additional resources and technical assistance to

SLTTs and the public as part of the FFRMS implementation.

Other Data Concerns

Comment: One commenter requested FEMA provide additional guidance on how to identify the appropriate lifecycle for a proposed action that uses CISA to determine the FFRMS floodplain. The commenter noted that FEMA used a default 50-year lifecycle analysis (in the regulatory impact analysis) and stated that would not be appropriate for all actions. The commenter requested FEMA provide information on how the 50-year lifecycle timeline was determined, as well as guidelines on how to determine the appropriate lifecycle on a case-by-case basis.

FEMA Response: FEMA's regulatory impact analysis was based on a report defaulting to a 50-year lifecycle, but FEMA intends to determine the appropriate service life on a case-by-case basis for each action. The FFRMS Job Aid provides additional information on service life and how FEMA will make those individual determinations.²¹⁵

J. FFRMS Implementation

FEMA received several comments regarding implementation of the FFRMS. Commenters raised general process concerns with compliance with and enforcement of the FFRMS, and costs and delays with implementing the FFRMS. Commenters also inquired as to how FEMA would coordinate with other Federal agencies when implementing the FFRMS, how FEMA would effectively complete outreach to ensure effective implementation of the FFRMS, and how FEMA would resolve environmental justice concerns.

1. Generally

Comment: A commenter stated raising individual properties or a group of properties could not be done without considering potential for impounding water on neighboring properties and roadways. The commenter recommended a holistic approach with local land use agencies, municipalities, and DOTs that identify the best path forward for a roadway corridor.

FEMA Response: FEMA appreciates the commenter's concerns regarding the impact of elevation on neighboring properties and roadways. FEMA takes a holistic approach through the 8-step process as the agency considers the impacts within or affecting floodplains and wetlands. FEMA applicants propose actions based on their needs and planning efforts to protect life and

property. Where FEMA provides funding for applicable actions, the FFRMS will help ensure resilience to structures and facilities against both current and future flood risks, including roadway corridors referenced by the commenter. Section G.2 of the FFRMS policy provides additional details on the application of the FFRMS resilience standard to facilities such as roadway corridors.

Comment: A commenter stated that FEMA's framework, while seeking to retain flexibility and be easily understood and consistently applied, would complicate understanding and implementation on the ground, as the framework created a confusing inundation of floodplain definitions—each of which could be used differently depending on the program and/or situation for which it is being used and/or applied.

This commenter noted the majority of structures and facilities impacted by the rulemaking were not residential in nature but stated concerns about implementation and difficulties of confusing and burdensome requirements. The commenter stated FEMA's proposed FFRMS floodplain definition and the vagueness of its depiction would generate countless unique floodplain definitions for programs. The commenter stated concern that once adopted and implemented for a very small number of Federally-funded residential projects, the Federal government would seek to expand the FFRMS applicability to all structures and that such a move would significantly impact housing affordability across the country.

The commenter noted the 1 percent annual exceedance probability (AEP) was set as the basis for the NFIP in the 1960s, and the 1 percent AEP was considered a fair balance between protecting the public and overly stringent regulation. The commenter stated that Executive Order 11988 has been historically and purposely tied to the 1 percent annual chance floodplain and that the Federal government had relied on the 1 percent annual chance floodplain when determining the extent of its authority and reach for most of its related programs, including the NFIP, FIRMs, and the mandatory flood insurance purchase requirements. The commenter stated this was no longer the case under the proposed rule.

The commenter stated that during the 1978 Guidelines drafting, concerns were raised about the need to provide a higher degree of protection for certain activities, and the 1978 Guidelines bifurcated the definition of floodplain for critical and non-critical actions. The

commenter noted that FEMA was taking a similar approach for the FFRMS floodplain per the Revised Guidelines, separating the definition further depending on the type of action and data availability. The commenter stated that unlike the revision made in the 1978 Guidelines where the 1 percent annual chance floodplain and the 0.2 percent annual chance floodplain were relatively well-known recurrence intervals and elevation levels that could be calculated, while the FFRMS floodplain is a "mystery." The commenter stated that with the FFRMS floodplain, the public would be faced with another set of regulatory definitions, creating inconsistencies and further confusing the various programs and their applicability and requirements. The commenter provided an example stating the higher flood risk standard for certain applications generated inconsistencies with the NFIP and the countless State and local regulations tied to the 1 percent annual chance floodplain. With what the commenter categorized as competing floodplain definitions, the commenter stated that Federal agencies, SLTTs, and the public would be left wondering which definition was the "real" definition—the climate-informed science definition, the freeboard definition, or the 0.2 annual chance floodplain definition. The commenter stated it would not always be clear which definition to follow under different circumstances and that while it may be beneficial for more people to understand their flood risk, the regulatory uncertainty and unpredictability of so many floodplain definitions would only multiply.

FEMA Response: FEMA disagrees that the framework to implement the FFRMS will create a confusing inundation of floodplain definitions—each of which could be used differently depending on the program and/or situation for which it is being used and/or applied. Consistent with current practice, FEMA will continue to make the floodplain determination as part of the action taken, reducing the burden on applicants in the process. As outlined in the FFRMS Policy, FFRMS requirements are consistent across FEMA's programs for those actions that are subject to the FFRMS. FEMA does not anticipate countless inconsistent floodplain determinations resulting from the implementation of this rulemaking for FEMA's programs as the appropriate floodplain definition is clearly outlined in the FFRMS Policy. FEMA notes that while other Federal agencies have their own implementing procedures for the

²¹⁵ See FFRMS Job Aid, pg. 14.

FFRMS, FEMA will coordinate with other agencies to avoid applying conflicting standards on the same action pursuant to Section H of the FFRMS policy.

FEMA agrees with the commenter that the majority of structures and facilities subject to FEMA's FFRMS implementation will not be residential in nature. FEMA does not believe the commenter's concerns are warranted regarding expansion of the FFRMS's applicability. As explained above, FEMA defines "action subject to the FFRMS" as "any action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility" in this rulemaking, and the FFRMS applies to grants for projects funding the new construction, substantial improvement, or repair of substantial damage under FEMA's grant programs and does not extend to all structures. FEMA's final rule is clear that FFRMS is limited in applicability to those Federally-funded actions.

Rather than bolstering the arguments against utilizing the FFRMS, FEMA believes the commenter's statements regarding the 1 percent AEP demonstrate a need to update the agency's floodplain determinations under part 9 to meet changing conditions and better ensure Federal investments are protected from flood damage, and that the natural values of floodplains are preserved. More than 45 years have passed since Executive Order 11988 and flooding continues to increase²¹⁶ and impact Federal investments.²¹⁷ FEMA believes the updates made to part 9 in this final rule are an important step forward to improve resilience and better protect Federal investments from flood damage than the standards set over almost a half a century ago. FEMA disagrees with the commenter that the FFRMS approaches result in confusion for Federal agencies, SLTTs, or the public. The FFRMS Job Aid provides the methodology and process for FEMA to determine the FFRMS floodplain under each approach, and FEMA's FFRMS policy explains how each approach will be

²¹⁶ As a result of climate change, flood events are on the rise. Climate change is increasing flood risk through (1) more "extreme" rainfall events," caused by a warmer atmosphere holding more water vapor and changes in regional precipitation patterns; and (2) sea-level rise. See Rob Bailey, Claudio Saffioti, and Sumer Drall, Sunk Costs: The Socioeconomic Impacts of Flooding 3 and 8, Marsh McLennan (2021).

²¹⁷ Federal Budget Exposure to Climate Risk. OMB Assessment found https://www.whitehouse.gov/wp-content/uploads/2022/04/ap_21_climate_risk_fy2023.pdf (last accessed Jan. 24, 2024).

applied to specific actions based on the type and criticality of the action involved, the availability and actionability of data, and equity concerns. FEMA believes these resources provide sufficient clarity for implementation. To the extent stakeholders have questions after reviewing these resources, FEMA intends to provide SLTT partners and the public with additional resources to assist them in applying for FEMA-funded assistance programs.

FEMA further disagrees with the commenter that the agency's FFRMS policy approach is inconsistent with the NFIP minimum standards and other Federal, State, local, Tribal, and territorial standards. Rather, the FFRMS is generally a higher standard. Further, § 9.11(d)(6) of the final rule states a more restrictive Federal, State, or local floodplain management standard will be applied if higher than the FFRMS. FEMA believes the commenter's concerns regarding confusion between different floodplain approaches are unwarranted. The floodplain determination in part 9 has always been distinct from the NFIP minimum floodplain management standards. While FEMA understands that the FFRMS approaches provide additional optionality, the FFRMS policy helps clarify which approach is applicable to those actions subject to the FFRMS.

Comment: Another commenter stated the application of the FFRMS should be in progressive and adaptive fashion and requested additional guidance on how the FFRMS would be applied.

FEMA Response: As explained in § 9.5(a)(3), FEMA will apply the FFRMS only to new FEMA-funded actions involving new construction, substantial damage, or substantial improvement for which assistance is made available pursuant to declarations under the Stafford Act that are commenced on or after the effective date of the final rule, and new FEMA-funded actions involving new construction, substantial damage, or substantial improvement for which assistance is made available, pursuant to notices of funding opportunity that publish on or after the effective date of the final rule. Ongoing projects will not be impacted by this final rule.²¹⁸ FEMA will continue to

²¹⁸ Note that FEMA first partially implemented the FFRMS by policy with respect to covered projects in existing floodplains in its Public Assistance and Hazard Mitigation Assistance programs. See FEMA Policy 104-22-003, "Partial Implementation of the Federal Flood Risk Management Standard for Public Assistance (Interim)," June 3, 2022 found at https://www.fema.gov/sites/default/files/documents/fema_fp-104-22-0003-partial-implementation-ffrms-pa-interim.pdf (last accessed Jan. 24, 2024) and FEMA

analyze the effectiveness of the agency's FFRMS policy as part of the FFRMS implementation, and the policy will be reviewed, revised, extended, and/or rescinded within four years of the issue date.

Comment: The same commenter inquired as to how the final rule would impact the current way FEMA-regulated floodplains were handled during the NEPA process.

FEMA Response: FEMA's integrated reviews under E.O. 11988 and NEPA are unchanged by the final rule.

Compliance/Enforcement

Comments: Two commenters sought clarification on how FEMA would ensure compliance with the rule. One commenter stated the rule did not address how FEMA would ensure compliance and enforcement of the FFRMS. The commenter noted FEMA would monitor and evaluate the implementation of the FFRMS by Federal agencies and recipients of Federal funds but did not specify how FEMA would do so. The commenter asked FEMA to provide more information and procedures on what mechanisms FEMA would use to verify that Federal actions complied with the FFRMS, what consequences FEMA would impose for non-compliance, and how FEMA would handle disputes or appeals regarding compliance. Another commenter also stated the rule did not include monitoring, evaluating, or compliance.

FEMA Response: FEMA currently leverages the 8-step process detailed in 44 CFR part 9 as the mechanism to implement Executive Order 11988, as amended and will continue to use the 8-step process to monitor and verify compliance with the FFRMS. To monitor and evaluate the implementation of the FFRMS, FEMA will continue to rely on step 8 of the 8-step process. Step 8 of the process found at 44 CFR 9.6(b)(8) requires FEMA to review the implementation and post-implementation phases of the proposed action to ensure that the requirements stated in § 9.11 are fully implemented. Oversight responsibility is integrated into existing processes for each grant program. For each approved action, grant assistance is generally conditioned to follow the requirements determined

Policy 206-21-003-0001, "Partial Implementation of the Federal Flood Risk Management Standard for Hazard Mitigation Assistance Program," Dec. 7, 2022 found at https://www.fema.gov/sites/default/files/documents/fema_policy-fp-206-21-003-0001-implementation-ffrms-hma-program_122022.pdf (last accessed Jan. 24, 2024). Some current FEMA actions may be subject to these partial implementation policies; however, those actions would not be subject to this final rule or policy.

during the 8-step process. FEMA is not making changes to paragraph (b)(8) of § 9.6 in the final rule and will continue to use the current process to ensure compliance with the FFRMS. To address commenters' concerns regarding how the agency would address non-compliance, FEMA will rely on the provisions of 2 CFR part 200. 2 CFR 200.339 also allows FEMA to take action to remedy a recipient's noncompliance with federal requirements, including those required by 44 CFR part 9, such as imposing new conditions on the award or deobligating funding for the award if a recipient does not adhere to the requirements set forth during the part 9 review process. Disputes regarding compliance would follow the specific grant program's appeals process.²¹⁹

Costs and Delays

Comments: Some commenters had questions regarding the costs associated with FFRMS implementation and whether or not implementation would result in delaying actions subject to the FFRMS. Some of these commenters raised specific concerns about increased costs. One commenter stated there would be a significantly increased cost of compliance for Federally funded projects as a result of the rule and stated the Federal government should bear the full cost of FFRMS implementation. The commenter also asked whether the FFRMS would be adopted for FEMA funding only or for all Federal agencies and whether the FFRMS would apply to Federally funded projects that are focused on flood damage reduction projects. Another commenter stated the FFRMS implementation, through higher vertical elevation or floodproofing, or other mitigation mandates, could significantly alter and raise the cost of water resource projects and ongoing operations and maintenance for water resources infrastructure systems, which were paid for by the local taxpayers. The commenter asked how the FFRMS would interface with other Federal agencies and impact non-Federal sponsor responsibilities for projects. A third commenter stated concern for the increased costs of meeting heightened standards and recommended FEMA identify opportunities to expand the agency's grants and otherwise reduce local costs to help ensure the new resilience standard did not prevent projects from going forward.

Two commenters raised concerns regarding equity and costs. One

commenter stated the rule would increase the costs of Federally-funded projects and that while the higher standards would help decrease costs to the community and residents in the long term, the higher short-term costs could have the unintended effect of making needed projects infeasible, especially for communities of low-to middle-class incomes and taxbases. This commenter recommended FEMA work to increase funding to implement FFRMS through increasing grant funding cap ceilings, expanding funding opportunities, and lowering cost share requirements. Another commenter stated both the rule and FFRMS policy would potentially raise costs associated with Federal actions and implement ambiguous standards ill-suited to rural areas. The commenter stated the rule and FFRMS policy raised design standards for Federal actions, which would affect mitigation and public assistance projects for post-disaster recovery. The commenter stated the elevated design standards would increase project costs and these increased costs would be absorbed into applications and proposals for these projects. The commenter wrote that these projects already had limited available funding and were often prohibitively competitive for rural communities, creating an additional burden on these applicants.

FEMA Response: FEMA appreciates the commenters' concerns on the increased costs of projects and the commenter's requests to expand grant funding and grant funding caps, as well as lowering cost-share requirements. The cost of compliance with the FFRMS will be included in the total project costs and will be funded at each program's applicable cost-share. Some FEMA programs are capped in funding each year, thus, the additional costs of FFRMS requirements would not add to the total funding for these programs. The effects of the FFRMS requirements would be distributional within the existing funding caps and would not constitute new spending by FEMA. For disaster programs where funding is not capped, the application of the FFRMS will increase the total amount of funding provided under the program, and each project will be subject to the applicable cost-share. Cost-share requirements are determined consistent with specific grant program requirements.

As explained above, the FFRMS is only applicable to actions involving the use of Federal funds for new construction, substantial improvement or to address substantial damage to a structure or facility. This rulemaking is

applicable only to FEMA-funded projects for FEMA programs such as IA, PA, and HMA, and grants processed by FEMA's GPD. This includes some flood damage reduction projects.

FEMA has always incorporated social concerns and economic aspects into the 8-step process as part of the practicability analysis. FEMA's revisions to part 9 reflect consideration of the type and criticality of the action involved, the availability and actionability of the data, and equity concerns in the implementation of Executive Order 11988, as amended. FEMA also has an agency-wide initiative focused on reducing barriers and increasing opportunities so all people, including those from vulnerable and underserved communities, can get help when they need it.²²⁰ FEMA reviews all proposed FEMA-funded actions for potential disproportionate and adverse human health and environmental effects on communities with environmental justice concerns using a standardized environmental justice compliance review process.

FEMA disagrees with the commenter's suggestion that the FFRMS is ill-suited to rural areas, as disasters impact all areas and flooding continues to increase across the United States, including in rural areas.²²¹ Rather, these areas can benefit from Federal investments that are more resilient to flooding. FEMA believes the FFRMS will ensure that Federal funding will result in more resilient rural communities, without overly burdening these communities as they seek to recover. While FEMA acknowledges some of the agency's grant programs have cost share requirements and that competition exists for FEMA funding, the agency has programs in place to assist rural and other disadvantaged communities.²²²

²²⁰ See <https://www.fema.gov/emergency-managers/national-preparedness/equity> (last accessed Jan. 24, 2024).

²²¹ Information on FEMA disaster and other declarations, see <https://www.fema.gov/disaster/declarations> (last accessed Mar. 27, 2024). For FEMA disaster and other declarations specific to the commenter, see https://www.fema.gov/disaster/declarations?field_dv2_declaration_date_value%5Bmin%5D=2019&field_dv2_declaration_date_value%5Bmax%5D=2024&field_dv2_declaration_type_value=All&field_dv2_incident_type_target_id_selective=All&field_dv2_state_territory_tribal_value%5B%5D=MT (last accessed Mar. 27, 2024).

²²² For example, see FEMA, Press Release, Biden-Harris Administration Announces Nearly \$2 Billion in Available Funding to Increase Climate Resilience Nationwide, <https://www.fema.gov/press-release/20231012/biden-harris-administration-announces-nearly-2-billion-available-funding> (last accessed Mar. 27, 2024) ("As part of the Administration's Justice40 initiative, the BRIC and FMA programs aim to deliver 40 percent of their overall benefits

²¹⁹ FEMA's appeals and arbitrations process for PA can be found at 44 CFR 206.206 and HMGP's appeals process can be found at 44 CFR 206.440.

Comment: Two commenters stated concerns with delays. One commenter stated concerns with project delays regarding FEMA making the final decision on the information the applicant would use and making the final decision on how permitting agencies were processing and permitting federal actions. Another commenter raised similar concerns regarding permitting, stating the proposed rule and policy would create separate permitting standards for some Federal and non-Federal actions, adding complexity that necessitated additional expertise when administering local floodplain programs and disproportionately impacting rural communities that already lacked sufficient staffing and funding to administer these programs. This commenter also stated the proposed rule and policy would also lengthen project timelines for Federal actions. The commenter stated that FEMA making the decisions on both the information the applicant is using and how permitting agencies would process and permit Federal actions. The commenter stated this would add time, documentation, and coordination between local communities, project proponents, stakeholders, and even FEMA, for critical mitigation projects and urgent post-disaster recovery efforts that required expedience. The commenter requested that FEMA minimize red tape and expense for communities seeking to implement projects, as the proposed rule adds bureaucracy and increases the resources required to successfully implement meaningful projects.

Another commenter raised concerns regarding both costs and delays, requesting further clarification on whether the FFRMS allowed for FEMA funding to cover expenses associated with making necessary improvements and enhancements to roadways, bridges, and culverts or if the funding was only for the in-kind replacement of

to disadvantaged communities that are marginalized, overburdened by pollution, and underserved. . . . FEMA is providing up to 90 percent federal cost share for FMA in disadvantaged communities, relative to a standard cost share of 75 percent. Designated Community Disaster Resilience Zones (CDRZs) are eligible for up to 90 percent federal cost share for BRIC, relative to a standard cost share of 75 percent. . . . FEMA continues to not require a Benefit-Cost Analysis as a condition to apply for an Economically Disadvantaged Rural Community, federally recognized tribal government, or a subapplicant with a hazard mitigation project within or primarily benefiting a Community Disaster Resilience Zone. FEMA will review the hazard mitigation project subapplications that are eligible for selection and may assist such communities with developing a BCA.”).

structures. The commenter stated additional funding should be considered for the delay in project delivery due to the application of the FFRMS.

FEMA Response: FEMA appreciates the commenters’ concerns regarding project delays and costs. FEMA notes the determination on the information the applicant is using under part 9 has always been made by the agency and thus, FEMA does not anticipate administrative delays with projects as a result of that aspect of FFRMS implementation. The time taken to complete the 8-step process will be project specific. Additional time, documentation, and coordination may be necessary for projects subject to the FFRMS (*i.e.*, actions that involve new construction, substantial damage, or substantial improvement as they are typically the most complex types of actions that FEMA funds). As part of the final rule, FEMA adjusted for inflation certain thresholds that determine which actions are exempt from, or subject to, an abbreviated 8-step process. FEMA will also establish a procedure for future annual adjustments of these thresholds. The thresholds enable FEMA to exempt or expedite the requirements of 44 CFR part 9 by streamlining the process for those actions that offer little opportunity for alternate locations or actions, or minimization, due to practicability. These changes may mitigate, as to smaller projects, timing concerns raised by the commenters.

Regarding permitting actions, FEMA will provide additional guidance for the public and SLTT partners identifying what the FFRMS is, and how the agency will implement the updates to part 9 to assist applicants for FEMA-funded assistance programs. FEMA’s regional offices will also provide technical assistance as part of the rule’s implementation. For those SLTT entities that may be permitting actions, as explained above, FEMA’s role under 44 CFR part 9 has not changed with this rule. The changes made in this final rule are to implement updates to Executive Order 11988, as amended, and to otherwise update the 8-step process. Changes related to the floodplain determination implementing the FFRMS will only be applicable to those actions subject to the FFRMS as defined in the rule. FEMA notes this final rule does not apply to a local community’s permitting processes under the NFIP’s floodplain management regulations. Those regulations are found at 44 CFR part 59 *et seq.*

FEMA understands the final commenter’s concerns regarding applicability of this rulemaking to

improvements and enhancements to roadways, bridges, and culverts, as well as in-kind replacement of structures. In each scenario presented by the commenter, FEMA’s funding is based on actual project costs for any FEMA-funded project. FEMA understands that any project may be delayed due to a variety of factors, and increased costs associated with those delays are generally part of the actual project costs. Additional costs incurred to comply with FFRMS would be eligible for FEMA funding.

Timing

Comment: Two commenters commented on the timing for implementing the rule. One commenter stated concern that the proposed changes could significantly restrict ongoing work. The commenter stated the proposed rule and policy did not identify when it would become effective, or how it would affect projects related to ongoing recovery efforts. The commenter requested the effective date be clarified and implemented so as to not disrupt ongoing recovery efforts. The other commenter requested FEMA consider “grandfathering” clause similar to the one provided in Executive Order 11988.

FEMA Response: FEMA is issuing this final rule with an effective date of September 9, 2024. As explained in § 9.5(a)(3), FEMA will apply the FFRMS only to new actions for which assistance is made available pursuant to declarations under the Stafford Act that are commenced on or after the effective date of the final rule, and new actions for which assistance is made available pursuant to notices of funding opportunity that publish on or after the effective date of the final rule. Ongoing projects will not be impacted by this final rule.²²³ FEMA does not believe a grandfathering clause is needed for this rulemaking.

²²³ Note that FEMA first partially implemented the FFRMS by policy with respect to covered projects in existing floodplains in its Public Assistance and Hazard Mitigation Assistance programs. See FEMA Policy 104–22–003, “Partial Implementation of the Federal Flood Risk Management Standard for Public Assistance (Interim),” June 3, 2022 found at https://www.fema.gov/sites/default/files/documents/fema_fp-104-22-0003-partial-implemetnation-ffrms-pa-interim.pdf (last accessed Jan. 24, 2024) and FEMA Policy 206–21–003–0001, “Partial Implementation of the Federal Flood Risk Management Standard for Hazard Mitigation Assistance Program,” Dec. 7, 2022 found at https://www.fema.gov/sites/default/files/documents/fema_policy-fp-206-21-003-0001-implementation-ffrms-hma-program_122022.pdf (last accessed Jan. 24, 2024). Some current FEMA actions may be subject to these partial implementation policies; however, those actions would not be subject to this final rule or policy.

Metrics

Comments: Two commenters requested FEMA develop metrics for the rule and policy implementation. One commenter stated that creating metrics was essential. The commenter noted that the proposed policy outlined objectives but lacked specific metrics to gauge progress towards achieving them. The commenter stated the absence of suitable metrics guaranteed a transition into subjective assessments, making it impossible to balance trade-offs among objectives. The commenter recommended that FEMA establish appropriate metrics to ensure objective evaluation and avoid subjective interpretations. The commenter requested that FEMA include measurable metrics in the policy statement, allowing for a quantifiable assessment of advancement toward achieving well-defined and substantiated objectives.

Another commenter agreed that the policy statement establishes objectives without setting metrics for measuring progress towards those objectives. The commenter wrote the proposal was unbalanced, as it was confined almost exclusively to restrictions on floodplain occupancy and use, with no policy objective promoting economic development or even economic development rationally constrained by other considerations. The commenter stated that it is difficult to understand how the proposed regulation would be useful given the proposal's narrow focus on constraints and restrictions. The commenter wrote that although FEMA stated that the FFRMS would promote resilience, the NPRM apparently reflected FEMA's perspective that economic development had no place in resilience. The commenter recommended that the proposal be modified to establish the objective of economic efficiency in floodplain use and occupancy, while giving appropriate weight to the constraints on efficiency and development already inherent in the policy statement. Similar to the other commenter, this commenter stated that the proposal should be modified to express the metrics that would be used in establishing quantifiable progress toward clear and supported objectives. The commenter wrote that failing to establish appropriate metrics assured the effort would devolve into subjective evaluations where trade-offs among objectives became impossible.

FEMA Response: FEMA understands the commenters' concerns regarding measuring the effectiveness of the rule and policy; however, the agency

disagrees that measurable metrics must be included in the regulation or policy to do so. FEMA disagrees that the absence of such metrics will result in subjective interpretations for the effectiveness of the rule and policy, as well as the FFRMS implementation for each action. FEMA's 8-step process and the results of the process are documented, and each applicant receives this information as part of the agency's compliance process.²²⁴ FEMA will evaluate the effectiveness of the rule and policy as part of the agency's role in the IWG to reassess the FFRMS.

FEMA disagrees with the commenter that the rule and policy do not consider economic development. Consistent with Executive Order 14030,²²⁵ the FFRMS will prioritize Federal investment and conduct prudent financial management of Federal government resources to mitigate climate-related financial risk, while accounting for and addressing equity considerations and economic impacts. For individual actions, FEMA identifies and evaluates practicable alternatives to carrying out a proposed action in floodplains or wetlands. In determining the practicability of the alternatives, social concerns and economic aspects are considered in § 9.9. These requirements ensure that FEMA's approach to floodplain use entails consideration of specific community needs.

Finally, FEMA disagrees with the commenter that the agency does not consider economic development, as the 8-step process requires a practicability analysis that considers factors including economic aspects. FEMA thus does not believe the agency needs to revise the FFRMS policy's principles or the rule's policy statements to ensure economic aspects are considered.

Appeals Process

Comments: Three commenters requested FEMA provide an appeals process. Two commenters wrote there was no viable process available to non-Federal entities to seek a review and adjudication of decisions made under the FFRMS. The commenters stated the impacts of the FFRMS would not be confined to the Federal government but would have far-reaching impacts on non-Federal public entities and the private sector. The commenters noted that Federal taxpayers should be protected from a Federal standard likely

²²⁴ See Environmental Planning and Historic Preservation Responsibilities and Program Requirements, available at https://www.fema.gov/sites/default/files/2020-07/fema_ehp_requirements_2018.pdf (last accessed Mar. 27, 2024).

²²⁵ "Climate-Related Financial Risk," 86 FR 27967 (May 20, 2021).

to impose costs without being subject to a benefits justification. The commenters recommended an appeals process be made available to non-Federal entities to review and adjudicate decisions made under the FFRMS. The third commenter requested an appeals process for communities that disagreed with a determination using the FFRMS. The commenters stated an appeals process would provide transparency and enable communities to have a voice in these important decisions that significantly impact them.

FEMA Response: FEMA does not believe a separate appeals process is required under part 9. FEMA conducts the 8-step process collaboratively with participation from applicants and grant program staff, with applicants having responsibility to provide information and participate in the process.²²⁶ This collaborative process allows for resolution of disagreements and for FEMA to provide technical assistance on the requirements of 44 CFR part 9. FEMA hopes to be able to resolve disagreements during this process so that a project may be made eligible. However, if a grant applicant disagrees with the application of the FFRMS and is subsequently denied funding for the project, the applicant should be able to avail itself of FEMA's existing appeals processes for its grant programs.²²⁷ FEMA understands the commenter's concern regarding community participation but believes the current 8-step process sufficiently engages the public. FEMA will continue to notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland and involve the affected and interested public in the decision-making process, as detailed further in § 9.8. Further, communities provide input into the floodplain determination for part 9. Pursuant to 44 CFR 9.11(d)(6), if there is a more restrictive Federal, State, or local standard, it will be used. This includes the use of local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data results in a more

²²⁶ See 44 CFR 9.16, 9.17.

²²⁷ See, e.g., 2 CFR 200.339 and 200.342; see also 44 CFR 206.206 (appeals and arbitration process for PA), 44 CFR 206.115 (appeals process for IA), 44 CFR 206.440 (HMGP and HMGP Post-Fire's appeals process); and "Hazard Mitigation Assistance Program and Policy Guide," pg. 211–216, 229–234, 240–241, and 247 available at https://www.fema.gov/sites/default/files/documents/fema_hma_guide_08232023_v1.pdf (last accessed April 2, 2024) (appeals process for HMGP, HMGP Post-Fire, BRIC, and FMA), "Public Assistance Program and Policy Guide," pgs. 39–41 available at https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf (last accessed Mar. 12, 2024).

restrictive standard. FEMA values additional input from SLTT partners and the public in the 8-step process.

Regarding cost concerns, FEMA completed an analysis of the economic impact of this rulemaking, and the agency believes that the benefits of preventing property damage and potentially saving lives justify the costs of the rule. These benefits are a result of the improved protection of structures and facilities due to increased elevation and floodproofing standards in FEMA's implementation of the FFRMS. This rule will help to ensure that Federal investments are better protected from flood damage, and that the natural values of floodplains are preserved.

Other Implementation Concerns

Comments: One commenter requested the rule require consideration of ways to prevent groundwater contamination when managing floodwater for use in water supply storage. The commenter suggested that the rule include provisions to pretreat or avoid the injection of "the first flush of stormwater runoff (generally the first runoff from 1.5 inches of rainfall), which can contain potential pollutants. The commenter also requested the rule acknowledge that MAR-related activities could be subject to other State and/or Federal regulations. Another commenter stated certain requirements for minimum conveyance, storage, and design criteria would be needed for all regional projects and watershed projects to ensure Federal funding eligibility with FFRMS implementation.

FEMA Response: FEMA understands the commenters' concerns but disagrees that any changes to the rule are required to ensure consideration of these issues. As previously explained, impacts are considered during the 8-step process including those referenced by the commenters. These considerations are not changing as part of this final rule and will continue to be utilized by FEMA when completing the analysis.

Further, Part 9 applies only to FEMA actions, and the FFRMS applies only to those actions where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility for FEMA programs such as IA, PA, and HMA, and grants processed by FEMA's GPD. Where applicants seek FEMA funding through these programs for the actions the commenters reference, part 9 applies.

Regarding a need to adapt design criteria, the FFRMS is a resilience standard that is applicable to structures and facilities. When considering design criteria, and particularly in cases where

elevation as a minimization measure may not be feasible or appropriate for facilities, the FFRMS floodplain, determined according to the process described in section C of the FFRMS policy, establishes the level to which a structure or facility must be resilient. Resilience measures include using structural or nonstructural methods to reduce or prevent damage; elevating a structure; or, where appropriate, designing it to adapt to, withstand and rapidly recover from a flood event. To the extent practicable and in accordance with applicable grant program requirements, projects for facilities located within a FFRMS floodplain must be designed to help ensure resilience against flooding up to the flood elevation of the FFRMS floodplain.

Comment: A commenter requested the exception process for the FFRMS allow for appropriate balancing of the community's overall public health and safety priorities in project decisions. The commenter gave an example of a hospital being limited in making critical improvements because of the cost to incorporate the FFRMS as an example of where the community's overall well-being might be impacted.

FEMA Response: FEMA disagrees that a separate exception process is needed given the flexibility of the 8-step process. For individual actions, FEMA identifies and evaluates practicable alternatives to carrying out a proposed action in floodplains or wetlands. In determining the practicability of the alternatives, social concerns and economic aspects such as those raised by the commenter are considered in § 9.9.

FEMA will continue to notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland and involve the affected and interested public in the decision-making process, as detailed further in § 9.8. FEMA values additional input from SLTT partners and the public in the 8-step process to help ensure FEMA actions meet community needs. FEMA notes any increased costs are generally eligible for funding under FEMA's assistance programs subject to cost share requirements.

2. Coordination With Other Federal Agencies

Commenters had questions about how FEMA would coordinate with other Federal agencies when implementing the FFRMS. Commenters raised questions and concerns with how FEMA would work with other Federal agencies to implement the FFRMS and the

interaction between the FFRMS and other programs such as the NFIP.

Comments: Commenters requested FEMA provide more information on how FEMA would complete coordination with other Federal agencies. A commenter requested clarification on how the agency would coordinate with other Federal agencies, and State and local governments to ensure consistent implementation of the FFRMS. One commenter asked how the primary agency would be determined and stated that many local agencies would not have the capability and capacity to navigate through different federal agencies with differing requirements for FFRMS implementation. Another commenter requested the proposed rule reconcile which agency's FFRMS procedures would be applied for projects with more than one Federal funding source. This commenter stated the NPRM did not provide a process to reconcile difference in requirements from different agencies and stated the differences between agencies that have already published FFRMS proposals. The commenter requested FEMA assure harmonization in the FFRMS criteria application across the Federal government. One commenter stated FEMA must also account for the central role that SLTT governments play in floodplain management, including designing climate resilience actions and implementing regulations. The commenter wrote consistent that expectations and procedures would benefit all sides by expediting interagency coordination and reducing confusion, delays, and accidental noncompliance.

FEMA Response: FEMA understands the concerns associated with consistent application of the FFRMS, and FEMA's FFRMS policy provides details on how FEMA will coordinate with other agencies when implementing actions in the same area as another Federal agency. See Section H, page 9. Specifically, FEMA's FFRMS policy states that when coordinating with other Federal agencies, FEMA will generally default to the FFRMS policy approach in FEMA's FFRMS policy, as appropriate. In addition, per 44 CFR 9.11(d)(6), actions must be consistent with the NFIP, as well as any more restrictive Federal, State, or local floodplain management standards. Those floodplain management standards may include a more restrictive application of another Federal agency's FFRMS approach.

Additionally, FEMA's interagency consultative role in the broader implementation of the FFRMS across the Federal government, through the

agency's participation in the Interagency Working Groups and the FIFM-TF helps ensure consistent and effective implementation across the Federal government. FEMA's work in that context is intended to address the types of concerns raised in the comment regarding harmonizing application of the FFRMS criteria across the Federal government. Executive Order 11988, as amended, further establishes the process by which the FFRMS will be reassessed in an interagency manner in conjunction with the WRC, the MitFLG, and the FIFM-TF. See Section 4(a) and (b).

FEMA understands the concerns raised by the commenters regarding local capability and capacity, and the agency will distribute additional resources to SLTT partners and the public identifying what the FFRMS is, and how the agency will implement the Executive Orders to assist applicants of FEMA-funded assistance programs. FEMA will also provide technical assistance through the agency's regional offices to support the FFRMS implementation. Additionally, FEMA notes the agency does consider the central role that SLTTs play in floodplain management. FEMA conducts the 8-step process collaboratively with participation from SLTT partners and grant program staff, with responsibilities and requirements for applicant participation in the 8-step process outlined in the long-standing requirements of 44 CFR 9.17. FEMA also recognizes the role played by SLTTs in setting floodplain management standards for their communities. Pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be used. FEMA believes the final rule and FFRMS policy outline consistent expectations and procedures for application of the 8-step process, minimizing confusion, delays, and accidental noncompliance.

Coordination With Specific Agencies

Comments: Some commenters encouraged FEMA to engage with specific agencies when implementing FFRMS. One commenter encouraged FEMA to coordinate with other Federal agencies, such as HUD, SBA, USDA, DOE, DoD, to improve application and effectiveness of national floodplain standards. Another commenter suggested Federal agencies, including FEMA, NRCS, FWS, and others examine the efforts of Federal agencies to restore floodplains. The commenter stated their understanding that even for Federal agencies responsible for addressing water, soil, and habitat concerns, floodplain regulations are a significant

barrier to restoration. The commenter stated the review of floodplain restoration efforts should not only cover the multi-million-dollar projects, but also include smaller-scale projects, as there are plenty of opportunities for small scale, impactful restoration projects that become too costly when implemented consistent with a regulatory process.

Another commenter requested that FEMA take a leadership role in tracking floodplain development on a national scale. The commenter stated there was no meaningful Federal commitment to track gains or losses in floodplain functions in the same way wetlands are tracked through the National Wetlands Inventory. The commenter referenced an estimate that 70 percent of the nation's floodplains had poor integrity due to development and alterations that limited floodplain functionality. The commenter noted this estimate provides a snapshot, but that it is essential to have nationwide statistics that allowed decision makers to understand and communicate floodplain loss. The commenter stated that floodplains are not broadly recognized by the public or decision makers for the valuable benefits they provide, and the lack of comprehensive, nationally-led data and analysis for floodplain functions has resulted in disjointed and unstable efforts focused on policy, funding, and communication in support of protecting and restoring floodplains in the United States, as well as a lack of data that allows an analysis of the impact that Executive Order 11988 has played. The commenter requested that FEMA, as the lead Federal agency charged with implementing a national floodplain management strategy, take a leadership role in tracking loss of functional floodplains as a component of the 8-step process when implementing Executive Orders 11988 and 13690. The commenter encouraged FEMA to work with HUD, the United States Geological Survey, the USACE, and other Federal agencies to track and quantify the effectiveness of the Executive Orders in avoiding floodplain development and preserving and restoring the natural and beneficial values of functional floodplains.

FEMA Response: FEMA's interagency consultative role in the broader implementation of the FFRMS across the Federal government, through the agency's participation in the Interagency Working Groups and the FIFM-TF helps ensure consistent and effective implementation. In this role, FEMA has coordinated, and will continue to coordinate, with other Federal agencies, including those listed by the

commenters, on the FFRMS. Executive Order 11988, as amended, further establishes the process by which the FFRMS will be reassessed in an interagency manner in conjunction with the WRC, the MitFLG, and the FIFM-TF.²²⁸ See Section 4(a) and (b).

For individual actions subject to the FFRMS, FEMA will continue to coordinate with other agencies to expedite and unify the floodplain management review process, as detailed in the FFRMS policy. FEMA appreciates the commenter's concerns regarding floodplain restoration, but notes that the commenter's request for multiple Federal agencies to do a retrospective review of their efforts to restore floodplains is beyond the scope of this rulemaking, which involves updates to FEMA floodplain management regulations to implement the FFRMS. FEMA's regulations at part 9 address the commenter's concerns regarding the need to protect floodplains. Specifically, § 9.2 discusses the agency's policy to "restore and preserve the natural and beneficial values served by floodplains." The final rule strengthens this policy by requiring the use of nature-based solutions when identified as a practicable alternative during the 8-step process as outlined in 44 CFR 9.9(b)(2). Further, § 9.11(b) discusses how FEMA will take action to restore and preserve floodplains and wetlands. FEMA understands the need to include smaller-scale projects and the commenter's concerns regarding costs when complying with regulatory requirements but believes the rule and FFRMS policy helps address these considerations. The rule and FFRMS policy require FEMA to consider the type of criticality of the action involved, the availability and actionability of data, and equity concerns. Actions are only subject to the FFRMS if FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility.

FEMA understands the commenter's concerns regarding tracking floodplain development and the lack of a national inventory for floodplains similar to the National Wetlands Inventory. FEMA agrees that nationwide statistics could better support decision makers and encourages other Federal agencies to look across the spectrum of floodplain impacts for their own agency activities. However, FEMA has no statutory authority to mandate the more structured tracking system the commenter requests across the Federal government.

²²⁸ 80 FR 6425 (Feb. 4, 2015).

FEMA completed that analysis for the FFRMS consistent with its requirements under OMB Circular A–4. FEMA considered the costs and benefits associated with this rule, including the overall increased costs of FEMA projects, in the regulatory impact analysis provided on the public docket for this rulemaking.²²⁹ FEMA believes that the benefits of preventing property damage and potentially saving lives justify the costs of the rule. These benefits are a result of the improved protection of structures and facilities due to increased elevation and floodproofing standards in FEMA’s implementation of the FFRMS. This rule will help to ensure that Federal investments are better protected from flood damage, and that the natural values of floodplains are preserved.

Pursuant to OMB Circular A–4, agencies are required to monetize quantitative estimates whenever possible; however, if monetization is impossible, the agency must explain why and present all available quantitative information. An agency should also provide a description of the unquantified effects and the strengths and limitations of the qualitative information. FEMA requested public comments throughout the RIA because it was aware of the limitations of the data used to estimate the costs and benefits of the rule. FEMA’s intention was to give the public the opportunity to submit data that was not available to FEMA at the time of publication of the NPRM but could help improve the estimates made for the final rule.

FEMA recognized in both its NPRM and RIA that there was a lack of actionable climate data for the FFRMS. FEMA expects that more data will be available as agencies implement the FFRMS, and that will be incorporated into interagency tools. FEMA further recognized that there was a limited amount of data available on the monetized benefits of freeboard that would be affected by the rule and requested comments from the public about whether there was available data that could be used for such estimates. FEMA conducted a quantitative benefits analysis for PA. Due to the limited quantitative analysis, FEMA also completed a qualitative analysis to meet its obligations under OMB Circular A–4 with respect to benefits by including the following: (1) literature reviews on the benefits of flood mitigation activities; (2) reports which analyzed potential savings from damage avoidance associated with including

freeboard in the construction of new residential structures in coastal areas at various freeboard levels; and (3) a description of qualitative benefits which included the potential for lives saved, savings in time and money from a reduced recovery period after a flood, increased safety of individuals, increased public safety, reduced personal and community impacts, and reduction in future health issues related to flooding.

With respect to the overall costs for the rule, FEMA met its obligations under OMB Circular A–4 by producing qualitative and quantitative measurements of the cost of the application of the FFRMS by each grant program. FEMA notes any increased costs for FEMA actions are generally eligible for funding under FEMA’s assistance programs subject to cost share requirements.

Comment: One commenter raised several questions about the implementation of FFRMS for roadways, bridges, and culverts and how FEMA would engage with other Federal and non-Federal agencies. The commenter raised several questions about how the FHWA and the Department of Transportation (DOT) regulations would interact with FEMA’s FFRMS implementation and requested FHWA regulations apply to these actions. The commenter raised questions on the use of State regulations and asked how the FFRMS would impact scour calculations and designs. The commenter asked how FEMA would determine when a nature-based approach would be used, stating that FHWA and many States had their own guidance for the use of nature-based approaches. The commenter also stated all of the FFRMS approaches indicated higher vertical flood elevations and an expanded horizontal floodplain and inquired as to whether elevating a structure would also include potential roadway grade changes and raising a bridge structure if viable for resilience as some locations.

FEMA Response: As explained previously, this rulemaking only applies to actions where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility under FEMA programs such as IA, PA, and HMA programs, and grants processed by FEMA’s GPD. FEMA does not fund repairs or improvements to Federal-aid roads, and this rulemaking would not be applicable to those roads. Rather, as the commenter states, the FHWA regulations would govern those actions. Where FEMA may provide funding, FEMA’s FFRMS policy provides details

on how FEMA will coordinate with other agencies when implementing actions in the same area as another Federal agency. See Section H, page 9. When coordinating with other Federal agencies, FEMA will generally default to the FFRMS policy approach in FEMA’s FFRMS policy, as appropriate. Where FEMA provides funding for these activities, FFRMS applies to improve resilience to facilities against both current and future flood risks.

Section 9.11(d)(6) of the final rule states that even when FEMA is providing funding, a more restrictive Federal, State, or local floodplain management standard will be applied. States with more restrictive standards continue to govern these actions. Section G.2 of FEMA’s FFRMS policy further discusses flood risk minimization for facilities and clarifies that FEMA would allow any specific method to be used to help ensure resilience against flooding up to the flood elevation of the FFRMS floodplain in conjunction with any other applicable codes and standards.

In response to the commenter’s concerns regarding nature-based approaches and conflicts with other Federal and State requirements, Section A.2 of FEMA’s FFRMS policy states “Applicability: The Natural Features and Nature-Based Solutions requirements of this policy apply to all Actions subject to the full 8-step decision-making process.” As explained in Section F, it should be used where possible.²³⁰

To address the commenters inquiry on whether roadway grade changes and raising a bridge structure would be required, FEMA begins any analysis by confirming applicability. As defined in § 9.4, a “structure” means walled and roofed buildings, including a temporary housing unit (manufactured housing) or a gas or liquid storage tank. The example provided by the commenter is not a structure under part 9 but rather a facility. As section G.2 of FEMA’s FFRMS policy states, “[t]he FFRMS is a resilience standard. Particularly in cases where elevation may not be feasible or appropriate for facilities, the FFRMS floodplain, determined according to the process described in section C of this policy, establishes the level to which a structure or facility must be resilient. Resilience measures include using structural or nonstructural methods to reduce or prevent damage; elevating a structure; or, where appropriate,

²²⁹ See <https://www.regulations.gov/document/FEMA-2023-0026-0013>.

²³⁰ See Section F of the FFRMS Policy, “Where possible, the Agency shall use natural systems, ecosystem processes, and nature-based solutions.”

designing it to adapt to, withstand and rapidly recover from a flood event.”²³¹

Coordination With Non-Federal Agencies

Comments: A commenter recommended FEMA engage through comprehensive consultations with local governments, non-Federal stakeholders, and regional experts to gather insights and refine the currently proposed national approach to ensure that policies aligned with regional differences and addressed specific challenges identified by stakeholders. The commenter also recommended FEMA develop a robust communication strategy to clarify the integration of local government systems and policy implementation with non-Federal stakeholders, while also creating a means of providing feedback throughout the FFRMS implementation process.

The commenter further stated that the roles, responsibilities, and authorities of non-Federal sponsors of actions might not align with FEMA’s FFRMS proposed policy and requested FEMA clarify how non-Federal sponsors and other stakeholders would engage with and be affected by the rule. The commenter noted collaboration between non-Federal sponsors, communities, the USACE, and FEMA can yield significant benefits, but stated the collaboration was contingent on a clear, justified, and achievable delineation of agency and stakeholder roles and responsibilities. The commenter stated the FFRMS proposed rule and policy failed to address the roles of non-Federal stakeholders, which could significantly hinder non-Federal stakeholders’ understanding of their responsibilities within the FFRMS framework. The commenter stated the FFRMS lacked an explanation of how the policy aligns with other floodplain-related policies. The commenter stated that this oversight might burden local non-Federal sponsors with additional responsibilities related to addressing property damage and new construction, potentially creating confusion and additional workload, and importantly, likely forcing non-Federal sponsors to assume duties outside their legal authorities and core competencies, and expose them to potential liability.

The commenter recommended that FEMA provide greater clarity on the roles of State and local government and other non-Federal stakeholders. The commenter requested that FEMA consider and accommodate the resource and legal boundaries of non-Federal

stakeholders, ensuring that policies and directives were realistic and compatible with their authorities and available resources and tailoring requirements that align with the authorities of non-Federal stakeholders. The commenter stated this entailed revising policies to avoid mandating actions that fall outside the legal jurisdiction of non-Federal stakeholders.

FEMA Response: FEMA disagrees with the commenter that additional engagement to refine the FFRMS is required. In addition to the comment period in 2023, FEMA completed outreach regarding FFRMS in 2015 as part of the development and publication of the Revised Guidelines, as well as the agency’s prior NPRM in 2016.²³²

FEMA understands the commenter’s concern regarding the role of non-Federal partners, but that role in the 8-step process remains unchanged as a result of this rulemaking. FEMA values the collaboration and coordination with SLTT and other non-Federal partners in the 8-step process and will continue to engage with stakeholders and the public throughout the 8-step process to meet the needs of communities and stakeholders impacted by FEMA actions subject to this rulemaking. Specifically for applicants for federal financial assistance, 44 CFR 9.17 outlines the specific roles and responsibilities that exist for them in the 8-step process.

Comment: The same commenter stated the rule lacked clarity on integration with local government systems and communications regarding policy implementation with non-

Federal stakeholders. The commenter stated this oversight raised doubts about adaptability and alignment with existing regional policies, potentially leading to conflicts and inefficiencies in implementation. The commenter raised concerns regarding the removal of Flood Hazard Boundary Maps (FHBM) stating that the removal resulted in a lack of clear alternatives or specific evaluation methodologies tailored to different regions and thus failed to ensure region-specific evaluations and risks in applying standards uniformly across diverse regions. The commenter stated a “one-size-fits-all approach” overlooked the complexity of regional flood dynamics and other variabilities, leaving critical questions unanswered. The commenter stated a tailored, regionally sensitive strategy was imperative to ensure diverse regional needs and variations were appropriately considered and integrated into any proposed policies.

FEMA Response: FEMA understands the commenter’s interest in ensuring effective integration with local government systems and communications with non-Federal stakeholders but disagrees that the agency’s rulemaking and FFRMS policy are lacking. Rather, the rule at § 9.11(d)(6) ensures the use of any local standard that may be higher than that required under part 9 allowing for local differences to be considered and implemented. The commenter further misunderstands FEMA’s edits to remove the term FHBM from the regulatory text. FEMA is not eliminating FHBMs from the 8-step process. As explained in the preamble to the NPRM, FEMA offers a range of flood risk products under the NFIP and categorizes these products as “regulatory” or “non-regulatory.” Regulatory flood risk products are created subject to procedural due process requirements, contain basic flood information, and are used for official actions such as identifying properties subject to mandatory flood insurance purchase requirements, or enforcing minimum building standards for construction in a floodplain in NFIP participating communities. Non-regulatory flood risk products are not tied to mandatory enforcement or compliance requirements for the NFIP and expand upon basic flood hazard information. References to FEMA’s regulatory products under the NFIP, such as the FHBM, FIRM, and FIS are being eliminated in the regulatory text to allow flexibility to encompass the full range of NFIP products (both regulatory and non-regulatory) available for use with the 8-step process. For example,

²³¹ See <https://www.regulations.gov/document/FEMA-2023-0026-0005>.

²³² Established by the 2013 Climate Action Plan, the Climate Task Force met with stakeholders from State, local, Tribal, and territorial governments; private businesses; trade associations; academic organizations; civil society; and other stakeholders to develop and provide recommendations in November 2014. President’s State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience, *Recommendations to the President*, (2014), available at https://obamawhitehouse.archives.gov/sites/default/files/docs/task_force_report_0.pdf at 7 (last accessed Jan. 24, 2024). FEMA, acting on behalf of the MitFLG and consistent with Executive Order 13690, published a draft of the Revised Guidelines for notice and comment on February 5, 2015 at 80 FR 6530. During the public comment period, over 25 meetings were held across the country with State, local, and Tribal officials and interested stakeholders to discuss the Revised Guidelines. There were also 9 public listening sessions across the country that were attended by over 700 participants from State, local, and Tribal governments, and other stakeholder organizations to discuss the Revised Guidelines. The final Revised Guidelines were published on October 22, 2015 at 80 FR 64008. FEMA published a notice of proposed rulemaking to implement FFRMS initially in 2016 at 81 FR 57402 (Aug. 22, 2016) along with a notice of availability and request for comment on a FFRMS policy at 81 FR 56558 (Aug. 22, 2016) and a notice of availability regarding a draft report at 81 FR 64403 (Sept. 20, 2016).

the existing § 9.7(c) prescribes a sequence of steps to obtain the floodplain, flood elevation, and other information needed.

FEMA has made, and will continue to make, floodplain determinations partnering with applicants in the 8-step decision-making process. As explained in the NPRM, FEMA will use best available information, which may include information that is non-regulatory or FEMA preliminary flood hazard data. To be designated as the best available information, the information must be at least as restrictive as the information provided by effective FIRMs. FEMA published the FFRMS Job Aid to further explain how the agency will make these determinations with the implementation of FFRMS.

Further, as previously explained, SLTTs can provide input into the determination. As explained above, FEMA will use a more restrictive Federal, State, or local standard for actions under part 9. This includes the use of local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data results in a more restrictive standard. Allowing the use of local data helps resolve the commenter's concerns that FEMA is not considering regional flood dynamics and other variabilities.

3. Outreach

Comments: Two commenters discussed outreach associated with the rulemaking process. One of the commenters expressed support for the extensive public outreach completed between 2015 and 2021 on the FFRMS. The other commenter requested FEMA reengage with States and local communities on the FFRMS proposed rule and policy. The commenter noted the floodplain program is administered at the local level and stated FEMA failed to conduct sufficient outreach or even hold a single public meeting to help explain the elaborate and expansive changes. The commenter stated local administrators and community officials deserved sufficient time to understand the proposed rule and policy changes and develop informed comments on how it might affect their programs. The commenter asked that FEMA perform additional outreach to educate local floodplain administrators, elected officials, and emergency managers on the proposed rule and policy.

Some commenters requested FEMA provide additional outreach, training, technical assistance, and community engagement as part of the FFRMS implementation. One commenter requested training, outreach, and

coordination at the program, departmental, interagency, and intergovernmental levels for successful implementation of FFRMS. The commenter requested FEMA provide technical resources including comprehensive guidance, maps and resources, and technical assistance. Another commenter requested FEMA provide guidance and training materials to stakeholders to ensure a comprehensive understanding and consistent application of the FFRMS. One commenter requested FEMA develop accessible guidance and tools to facilitate and improve the benefit-cost analysis for both nature-based solutions and hybrid green-gray infrastructure approaches. Another commenter recommended FEMA conduct virtual and in-person workshops and listening sessions to explain the FFRMS, changes to 44 CFR part 9 (including the 8-step process), including applications for FEMA grants under HMGP, FMA and BRIC. Another commenter stated appreciation for FEMA's plans to assist applicants with FFRMS and the 8-step process and encouraged the agency to seek sufficient funding to adequately staff such an effort.

FEMA Response: As one commenter noted, FEMA completed significant outreach and stakeholder engagement during the course of the FFRMS development and rulemaking processes. FEMA believes those outreach efforts were sufficient and additional public meetings for this rulemaking were not required.²³³ FEMA disagrees with one commenter requesting the agency

²³³ Established by the 2013 Climate Action Plan, the Climate Task Force met with stakeholders from State, local, Tribal, and territorial governments; private businesses; trade associations; academic organizations; civil society; and other stakeholders to develop and provide recommendations in November 2014. President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience, *Recommendations to the President*, (2014), available at https://obamawhitehouse.archives.gov/sites/default/files/docs/task_force_report_0.pdf at 7 (last accessed Jan. 24, 2024). FEMA, acting on behalf of the MitFLG and consistent with Executive Order 13690, published a draft of the Revised Guidelines for notice and comment on February 5, 2015 at 80 FR 6530. During the public comment period, over 25 meetings were held across the country with State, local, and Tribal officials and interested stakeholders to discuss the Revised Guidelines. There were also 9 public listening sessions across the country that were attended by over 700 participants from State, local, and Tribal governments, and other stakeholder organizations to discuss the Revised Guidelines. The final Revised Guidelines were published on October 22, 2015 at 80 FR 64008. FEMA published a notice of proposed rulemaking to implement FFRMS initially in 2016 at 81 FR 57402 (Aug. 22, 2016) along with a notice of availability and request for comment on a supplementary policy at 81 FR 56558 (Aug. 22, 2016) and a notice of availability regarding a draft report at 81 FR 64403 (Sept. 20, 2016).

complete additional outreach to allow for public comment. Local administrators and community officials had an opportunity to submit comments on the proposed rule and policy changes, and FEMA notes some communities did submit comments on this rulemaking. FEMA will perform additional outreach to SLTT partners, stakeholders, and the public, including distribution of additional resources to assist in FFRMS implementation.

FEMA agrees that successful implementation will require training, outreach and interagency coordination and appreciates the commenters' suggestions on ways to achieve effective outreach. FEMA participated in the IWG on Flood Resilience to support the implementation of the FFRMS. FEMA continues to collaborate with the IWG and other interagency groups consistent with Executive Order 11988, as amended, and the Revised Guidelines. FEMA will distribute additional resources to the public and SLTT partners identifying what the FFRMS is, and how the agency will implement the Executive Orders, and these resources will help applicants as they apply for FEMA-funded assistance programs. FEMA will also provide technical assistance through the agency's regional offices in support of FFRMS implementation. FEMA will also further consider the outreach options shared by the commenters as the agency begins FFRMS implementation after this rulemaking.

4. Equity and Environmental Justice

Comments: Commenters provided feedback on incorporating equity and environmental justice into the 8-step process. While commenters indicated support for FEMA's rule and FFRMS policy as a means of bolstering the agency's commitment to addressing equity and environmental justice when addressing flood risks, others requested additional clarification or provided recommendations on ways FEMA could further advance equity and environmental justice in the rule and FFRMS policy. Commenters requested the agency incorporate social, economic, and environmental concerns into the 8-step process. These commenters also requested more outreach to underserved communities and ways to address the increased costs of actions subject to the FFRMS.

One commenter stated that flood impacts are not experienced equally across communities in the United States, referencing policies such as redlining and lower tax rates as forcing underserved populations into flood-prone areas and resulting in those

communities facing disproportionately high risk from flooding. The commenter stated these communities have also been disproportionately impacted by the environmental degradation resulting from floodplain development, underscoring the relationship between floodplain management and environmental justice. The commenter stated underserved communities have faced inequities in the distribution of flood risk reduction resources, partially because of reduced capacity and opportunity to respond to flood hazards compared to more well-resourced communities. The commenter stated that, based on these inequities, any proposal to update floodplain management standards would have an outsized effect on underserved communities. The commenter requested that FEMA consider the implicit connections between the FFRMS and environmental justice and the potential impact on Federally-protected treaty rights to floodplain resources. The commenter also requested FEMA consider the long-term benefits—including economic benefits—that can result from stricter floodplain management standards and upfront investments to ensure more resilient development projects.

This commenter further recommended a regular environmental justice and Tribal treaty rights assessment to review unforeseen burdens or missed opportunities with environmental justice communities and Tribal treaty rights-holders, consistent with Justice40 after the rule takes effect. The commenter requested FEMA include a structure to ensure that Tribal, low-income, and frontline communities and communities of color would be elevated in refining how the FFRMS is used and updated over time. The commenter requested FEMA explore technical assistance opportunities to ensure support for low-capacity communities. The commenter requested FEMA incorporate FFRMS into the agency's Justice40 efforts and prioritize funding to Tribes and underserved communities to increase flood resilience, stating this prioritization was particularly important in places where a more protective standard for the floodplain could raise upfront project costs and impact affordability for low-income communities, taxpayers, and rate payers. Another commenter raised similar concerns regarding equity, environmental justice, and community engagement. The commenter stated that FEMA has the opportunity to explicitly advance and promote environmental justice within the rule and, consistent

with Executive Order 14096, FEMA should provide opportunities for the meaningful engagement of persons and communities with environmental justice concerns who are potentially affected by Federal activities. Quoting Executive Order 14096, the commenter requested FEMA provide timely opportunities for members of the public to share information or concerns and participate in the decision-making processes; fully consider public input provided as part of the decision making processes; seek out and encourage the involvement of persons and communities potentially affected by Federal activities; and provide technical assistance, tools, and resources to assist in facilitating meaningful and informed public participation. The commenter recognized FEMA's actions to incorporate meaningful engagement with environmental justice communities, but requested FEMA recommit to that engagement through this rulemaking.

Two commenters recommended FEMA revise the rule to ensure it explicitly addresses environmental justice concerns. One of these commenters stated that despite FEMA's statement that the proposed rule would not have adverse impacts on communities with environmental justice concerns, experience along with scientific and policy analysis found that Federal policies such as the FFRMS would have distributional impacts across sectors and communities, especially overburdened and underserved communities. The commenter cited to specific studies reflecting the level of flood risk increase for some disadvantaged communities and stated FEMA should ensure the final rule advanced environmental justice by requiring the consideration of disproportionate and adverse effects on communities with environmental justice concerns. Another commenter stated similar concerns with FEMA's statement in the proposed rule that the agency did not expect the rule to have a disproportionate and adverse human health or environmental effect on communities with environmental justice concerns and requested FEMA explicitly advance and promote environmental justice considerations in the final rule. The commenter stated that equity and environmental justice concerns must be acknowledged and weighed in the analysis of all FEMA-funded projects. This commenter requested guidance, tools, and resources to ensure best practices are used in project planning and design. The commenter stated flood-prone land

tended to be cheaper, disregarding hidden long-term costs and recommended FEMA strengthen transparency in the public's awareness of flooding risks in any community development and prioritize long-term safety over initial cost savings. Another commenter shared the concern raised by these commenters that FEMA did not consider environmental justice issues when drafting the rule and recommended FEMA actively promote environmental justice in the final rule. This commenter also referenced Executive Order 14096 and stated that climate-driven flood hazards were expected to disproportionately impact Black communities in the South. The commenter further stated some estimates indicated the Southeast stood to suffer the most economic damage due to climate change with incalculable social costs. The commenter provided additional statistics regarding flood risks and referenced a specific seawall project as an example of common failures to adequately consider environmental justice concerns in the context of floodplain adaptation.

FEMA Response: FEMA appreciates the commenters' concerns on the increased costs of projects, equity, environmental justice, and community engagement. FEMA is committed to meaningful engagement on environmental justice and understands that flood impacts are not always experienced equally across communities in the United States. The agency has always incorporated natural environment, social concerns, and economic aspects into the 8-step process as part of the practicability analysis, and this rulemaking will not change that practice. FEMA's revisions to part 9 reflect consideration of the type and criticality of the action involved, the availability and actionability of the data, and equity concerns in the implementation of Executive Order 11988, as amended. FEMA also has an agency-wide initiative focused on reducing barriers and increasing opportunities so all people, including those from vulnerable and underserved communities, can get help when they need it.²³⁴

FEMA reviews all proposed FEMA-funded actions for potential disproportionate and adverse human health and environmental effects on communities with environmental justice concerns using a standardized environmental justice compliance review process. This final rule will not

²³⁴ See <https://www.fema.gov/emergency-managers/national-preparedness/equity> (last accessed Jan. 24, 2024).

change that process. As an environmental justice review takes place on all FEMA proposed actions, FEMA does not believe an additional assessment is needed in conjunction solely with this final rule. Further, FEMA and the applicant may consider potential impacts on Tribal treaty rights, where applicable, when evaluating the practicability of alternatives in the 8-step process. As this would occur for all actions that potentially impact Tribal treaty rights, FEMA does not believe an additional assessment is needed in conjunction with this final rule.

Regarding the commenter's request that FEMA provide a way for these communities to engage on updates to the FFRMS, FEMA notes the agency is not solely responsible for revisions to the FFRMS or the Revised Guidelines. The MitFLG in consultation with the FIFM-TF will reassess the FFRMS annually, after seeking stakeholder input, and provide recommendations to the WRC to update the FFRMS, if warranted based on accurate and actionable science that takes into account changes to climate and other changes in flood risk. The WRC shall issue an update to the FFRMS at least every 5 years.²³⁵ Consistent with the requirements of Executive Order 11988, as amended, the interagency will engage with SLTTs and the public, including Tribal communities for any updates to the FFRMS.

As noted by the commenter, there are connections between the FFRMS and environmental justice. The FFRMS seeks to continue to improve the resilience of communities, including communities with environmental justice concerns, and help preserve the natural values of floodplains. Likewise, under the 8-step process, FEMA and the applicant may consider potential impacts on Tribal treaty rights, where applicable, when evaluating the practicability of alternatives. FEMA appreciates the commenter's request to consider economic benefits from stricter floodplain management standards and upfront investments, and the agency did consider the costs and benefits associated with this rule, including the overall increased costs of FEMA projects,²³⁶ in the regulatory impact

analysis provided on the public docket for this rulemaking.²³⁷ FEMA believes that the benefits of preventing property damage and potentially saving lives justify the costs of the rule. These benefits are a result of the improved protection of structures and facilities due to increased elevation and floodproofing standards in FEMA's implementation of the FFRMS. This rule will help to ensure that Federal investments are better protected from flood damage, and that the natural values of floodplains are preserved.

Regarding the commenters' concerns that FEMA provide opportunities for engagement and participation in the decision-making process, FEMA completed significant outreach in 2015 as part of the development and publication of the Revised Guidelines. That outreach included over 25 meetings across the country with State, local, and Tribal officials and interested stakeholders to discuss the Revised Guidelines and 9 public listening sessions that were attended by over 700 participants from State, local, and Tribal governments, and other stakeholder organizations to discuss the Revised Guidelines.²³⁸ FEMA believes those outreach efforts were sufficient.²³⁹ FEMA notes that, in addition to engagement on the FFRMS and rulemaking, FEMA's 8-step process incorporates community engagement

into the process. FEMA will continue to notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland and involve the affected and interested public in the decision-making process, as detailed further in § 9.8, as well as provide the public notice with a statement documenting the outcome of the 8-step process as detailed in § 9.12. Beyond all of the foregoing, FEMA also provides public notice for proposed actions under NEPA and other environmental planning and historic preservation laws and executive orders. This rulemaking will not change those requirements.

Additionally, to further engage with communities in the FFRMS implementation, FEMA will distribute resources identifying what the FFRMS is, and how the agency will implement the Executive Orders. These resources will help applicants as they apply for FEMA-funded assistance programs. FEMA's regional offices will also provide technical assistance in support of FFRMS implementation. FEMA anticipates these resources could be used in project planning and design, as requested by one of the commenters. Furthermore, FEMA has staff dedicated to assisting with implementation of environmental justice planning and compliance, and will develop further resources to assist in implementing environmental justice requirements.

FEMA agrees with the commenters that flood risk is not uniformly distributed. However, the agency does not believe changes to the regulatory text or policy are required to help ensure consideration of disproportionate and adverse effects on communities with environmental justice concerns. FEMA currently reviews all proposed actions in the 8-step process to identify and address any disproportionate and adverse human health or environmental effects on communities with environmental justice concerns to advance environmental justice. This process will not change as a result of this rulemaking.

Additionally, through the 8-step process, FEMA identifies impacts such as the flooding risks associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action. FEMA understands the commenter's concerns regarding potential hidden long-term costs of flood-prone land purchases. FEMA believes the agency's flood risk mapping efforts increase transparency in the public's awareness of flooding risks, and the agency's floodplain management

public docket of this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0003>.

²³⁸ Public meetings were held at a range of locations across the country at varied times to maximize participation. Meetings were held in Fairfax, VA; Seattle, WA; Dallas, TX; New York, NY; Ames, IA; Biloxi, MS; Sacramento, CA; and Hampton Roads, VA. See generally Guidelines for Implementing Executive Order 11988, Floodplain Management non-rulemaking docket available at <https://www.regulations.gov/docket/FEMA-2015-0006/document> for the public meeting notices and transcripts from the meetings.

²³⁹ Established by the 2013 Climate Action Plan, the Climate Task Force met with stakeholders from State, local, Tribal, and territorial governments; private businesses; trade associations; academic organizations; civil society; and other stakeholders to develop and provide recommendations in November 2014. President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience, *Recommendations to the President*, (2014), available at https://obamawhitehouse.archives.gov/sites/default/files/docs/task_force_report_0.pdf at 7 (last accessed Jan. 24, 2024). FEMA, acting on behalf of the MitFLG and consistent with Executive Order 13690, published a draft of the Revised Guidelines for notice and comment on February 5, 2015 at 80 FR 6530. The final Revised Guidelines were published on October 22, 2015 at 80 FR 64008. FEMA published a notice of proposed rulemaking to implement FFRMS initially in 2016 at 81 FR 57402 (Aug. 22, 2016) along with a notice of availability and request for comment on a supplementary policy at 81 FR 56558 (Aug. 22, 2016) and a notice of availability regarding a draft report at 81 FR 64403 (Sept. 20, 2016).

²³⁵ Revised Guidelines, pg. 20.

²³⁶ For example, FEMA found that for a project with a 75% FEMA/25% applicant cost share, the cost to an applicant to elevate a structure above the BFE to meet FEMA's FFRMS requirements using the FVA+2 (1.91 percent of construction cost) represented less than 0.5% of the total project cost, or an average of an additional \$4,775 in applicant cost share on an original total project cost of \$1,000,000. See A Benefit Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains, posted to the

programs further advance understanding of the impacts of development in floodplains.

FEMA appreciates the final commenter's information and example of challenges of failing to consider environmental justice concerns in Federal projects. FEMA acknowledges that the project described by the commenter was not a FEMA-funded project, but values the input provided by the commenter on the challenges faced when failing to consider environmental justice. FEMA is committed to meaningful engagement on environmental justice and seeking public input on proposed actions. As explained above, FEMA seeks input from the public as part of its reviews under Executive Orders 11988, 11990, 12898 and 14096, as well as NEPA, among other environmental planning and historic preservation laws and executive orders and has dedicated staff and a commitment to additional resources on environmental justice specifically.

Comment: Three commenters requested edits to the regulatory text to advance environmental justice with two suggesting specific edits. One commenter requested FEMA revise § 9.2(d) to identify environmental justice and avoid disproportionate effects to communities with environmental justice concerns as policy priorities. Another commenter requested FEMA revise § 9.6(b)(2) by adding language consistent with HUD's proposed rule to state that "when the proposed activity is located in or affects a community with environmental justice concerns under Executive Order 12898, public comment and decision making under this part shall be coordinated with consultation and decision making under HUD policies implementing 24 CFR 58.5(j) or 50.4(l)."²⁴⁰ The commenter also requested FEMA revise the principles in the proposed FFRMS policy to include a new principle on environmental justice to state that FEMA would work to reduce adverse impacts on communities with environmental justice concerns and engage communities in decision-making processes if the Federal action is a concern to these communities. This commenter requested FEMA revise § 9.11 to ensure FEMA would promote mitigation and minimization measures to address any disproportionate and adverse flood risks affecting these communities. Another commenter requested FEMA revise § 9.10 to require consideration of disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative.

That commenter requested FEMA encourage proactive community engagement and community-led planning within the final rule and recommended FEMA reassess part 9 and incorporate language to codify the agency's commitments to environmental justice and community engagement.

FEMA Response: FEMA does not believe the proposed edits to the regulatory text or FFRMS policy are necessary to address the commenters' environmental justice concerns. As explained above, FEMA has always incorporated natural environment, social concerns, and economic aspects into the 8-step process as part of the practicability analysis. FEMA's revisions to part 9 in this rulemaking reflect consideration of the type and criticality of the action involved, the availability and actionability of the data, and equity concerns in the implementation of Executive Order 11988, as amended. FEMA also has an agency-wide initiative focused on reducing barriers and increasing opportunities so all people, including those from vulnerable and underserved communities, can get help when they need it.²⁴⁰ Further, as explained above, FEMA reviews all proposed FEMA-funded actions for potential disproportionate and adverse human health and environmental effects on communities with environmental justice concerns using a standardized environmental justice compliance review process. This final rule will not change that process.

FEMA does not believe the specific changes requested to revise § 9.2(d) to identify environmental justice and avoid disproportionate effects to communities with environmental justice concerns as policy priorities are necessary, given the agency's consideration of natural environment, social concerns, and economic aspects in the 8-step process and the agency's review of all proposed FEMA-funded actions under Executive Order 12898 and 14096. FEMA further does not believe specific regulatory text is required to implement Executive Orders 12898 and 14096, as the agency already implements these requirements through other FEMA policies and processes.²⁴¹ As with the changes requested to

²⁴⁰ See <https://www.fema.gov/emergency-managers/national-preparedness/equity> (last accessed Jan. 24, 2024).

²⁴¹ See "Instructions on Implementation of the Environmental Planning and Historic Preservation Responsibilities and Program Requirements," pgs. 4 and 15, available at https://www.fema.gov/sites/default/files/2020-07/fema_ehp_instructions_implementation_2018.pdf (last accessed Apr. 22, 2024).

§ 9.2(d), FEMA does not believe that adding an additional principle to the FFRMS policy is necessary, given the agency's consideration of social concerns, which may include equity, and other factors under § 9.9(c), and environmental justice reviews conducted under Executive Orders 12898 and 14096 for proposed actions.

In § 9.11, FEMA details the requirements when actions must be located within or will affect a floodplain or wetland. The provisions of that section, as proposed, can be used to address flood risks affecting communities, including any disproportionate and adverse flood risks. FEMA is also required to address any disproportionate and adverse effects of actions on communities with environmental justice concerns, to the greatest extent practicable and permitted by law.

FEMA believes that the wording in § 9.10 is sufficient without further edits to enable the Agency to identify potential direct and indirect adverse impacts associated with the occupancy and modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action. In Step 4, FEMA considers a wide variety of factors in identifying potential impacts of an action that may be of relevance to communities with environmental justice concerns, including pollution, public health, safety, and welfare, and numerous others.

FEMA is not updating significant portions of the public notice process in this rulemaking with respect to public comment and community engagement, as FEMA does not believe the current notice process is inadequate. However, FEMA did update § 9.8(c)(4)(i) to incorporate notice through the internet or another comparable method. When notice is provided electronically, FEMA will also provide links to electronic versions of relevant maps. FEMA will continue to notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland and involve the affected and interested public in the decision-making process, as detailed further in § 9.8.

K. Emphasis on Nature-Based Approaches

1. General Support

Comments: Several commenters expressed specific support for FEMA's revisions to part 9 and the FFRMS policy to further incorporate nature-based solutions into the 8-step process.

Commenters stated that the emphasis on natural features and nature-based approaches was important as these were innovative, sustainable solutions and aligned with other Federal, State, and local goals. Commenters requested FEMA implement these changes as soon as possible. Some commenters also requested that FEMA develop additional resources for nature-based solutions. One commenter recommended that FEMA require consideration of nature and nature-based approaches early in the 8-step process. The commenter stated that doing so was critical to protecting floodplain values, minimizing impacts to natural areas, ESA-listed species, and Tribal treaty rights, and effectively building resilience to flood impacts. The commenter requested that FEMA consider nature-based solutions in step 2 during public notice and that FEMA continue to provide and publish the best examples of where nature-based approaches were applied and led to flood risk reduction benefits. A commenter, while supporting FEMA's requirement to use natural features and nature-based approaches where possible, recommended that FEMA clearly assert the criteria that would satisfy the use of natural features and nature-based approaches either in the final rule or additional guidance.

FEMA Response: FEMA appreciates the commenters' discussion of the importance of natural features and nature-based approaches and agrees that it is important to implement these changes with this final rule in a swift manner. FEMA's policy will be reassessed on a four-year cycle to ensure the approach continues to meet the goals of Executive Order 11988, as amended.

Regarding the commenter's request for consideration of nature-based solutions early in the 8-step process, FEMA's process at step 2 is to solicit any pertinent input from the public after the location determination for the proposed action and before the agency has made any decisions regarding practicable alternatives. Step 2 allows the public to provide information on potential alternatives, including nature-based solutions. FEMA notes the proposed action in step 1 may also incorporate nature-based approaches, which the public can comment on in step 2. FEMA does not believe the language of the regulatory text needs revision to address the concerns raised by the commenter as the agency's practice already incorporates the process outlined.

FEMA's FFRMS policy provides more information on the criteria to satisfy the use of natural features and nature-based

approaches. FEMA plans to provide resources that will incorporate additional examples of nature-based approaches and will coordinate with other Federal agencies regarding the use of nature-based solutions as part of the FFRMS implementation and beyond. FEMA will distribute these and other resources for the public and SLTT partners to help applicants for FEMA-funded assistance programs. FEMA's regional offices will also provide technical assistance in support of the final rule's implementation.

2. Implementation of Nature-Based Solutions

Comment: A commenter requested FEMA further amend part 9 to clarify that that nature-based solutions must be considered in all cases, and documentation should be provided where such approaches were ultimately found to be not practicable.

FEMA Response: FEMA believes that the final rule addresses the commenter's concerns as nature-based solutions must be considered in all instances where alternatives can be considered in the 8-step process. FEMA's procedures for review of its actions under part 9 include documenting the 8-step process and will incorporate documentation of nature-based solution consideration as part of that process.

Comments: Two commenters requested FEMA remove "where appropriate" under Step 5, proposed § 9.6(b)(5), which stated that FEMA would integrate natural systems, ecosystem services, and nature-based approaches "where appropriate." In contrast, two commenters requested FEMA recognize situations where nature-based solutions would not be appropriate. A commenter wrote because Executive Order 11988, as amended, recognized nature-based approaches were not always possible or practical, that FEMA's rule must recognize situations where nature-based approaches were infeasible. The commenter stated that while nature-based approaches might be preferred, they might not always provide the optimal or even the most cost-effective solutions and recommended that FEMA incorporate language into part 9 requiring the agency to recognize the role of State and local agencies in ultimately approving nature-based approaches for addressing impacts to wetlands and floodplains when determining the practicability of the alternatives set out. Another commenter stated while nature-based and hybrid approaches could be prioritized, they may not be feasible to protect all infrastructure.

FEMA Response: The language "where appropriate" is important, as not all actions can integrate natural systems, ecosystem services, and nature-based approaches. FEMA funds a range of actions, and not all of those actions can utilize nature-based approaches. For example, FEMA funds structure repairs, and those types of repairs generally could not utilize a nature-based approach as an alternative.

FEMA's regulation and policy require the incorporation of nature-based approaches into the development of alternative actions to the extent possible, consistent with Executive Order 11988, as amended. In addition, FEMA's FFRMS policy clarifies that nature-based approaches can also be incorporated as minimization measures where they are not possible as a practicable alternative. However, nature-based approaches will only be implemented where appropriate. Nature-based approaches are subject to the practicability analysis which relies on the factors identified in § 9.9(c). Those factors include legal constraints such as where state or local law is conflicting. For an alternative to be considered practicable, it must meet the need of the action FEMA is taking. Additionally, § 9.11(d)(6) requires FEMA to utilize any higher Federal, State, or local standards in the 8-step process.

Nature-based solutions apply to any FEMA-funded action that requires an analysis of alternatives, not just those that are subject to the FFRMS (new construction, substantial damage, or substantial improvement). The FFRMS applies to grants for certain projects under FEMA programs such as IA, PA, and HMA programs, and grants processed by FEMA's GPD. All Federal agencies will utilize the Revised Guidelines for their own FFRMS implementation.

Additionally, FEMA disagrees that additional language is required in part 9 to recognize the role of State and local agencies in the process for determining when nature-based solutions may be practicable for a particular action. FEMA conducts the 8-step process collaboratively with participation from SLTT partners and grant program staff, with responsibilities and requirements for applicant participation in the 8-step process outlined in the long-standing requirements of 44 CFR 9.17. FEMA will work with SLTTs to determine what practicable alternatives may exist, including nature-based solutions.

Comment: A commenter recommended that FEMA apply nature-based approaches beyond the practicable alternatives analysis. The

commenter stated that the underlying assumption of the proposed rule was that nature-based approaches offered an alternative to reduce the effects of a traditional development project. While supporting the requirement to avoid floodplains and wetlands impacts, the commenter requested the rule also acknowledge that floodplains and wetlands restoration is an important flood risk reduction strategy in its own right. The commenter stated that Federal, State, and non-profit entities are focused on restoration efforts and that their investments are needed to accelerate the use of nature-based flood risk reduction strategies such as wetland and floodplain restoration. The commenter acknowledged that some of their comments may be outside the scope of the rulemaking, but stated that they submitted such comments because floodplain regulations and management are critical to whether we have more, less, or an indifferent amount of federal investments in nature-based approaches to floodplain restoration across the nation. The commenter stated that the nation desperately needs more floodplain restoration if we're going to move from reacting to disasters to being proactive and delivering on the multitude of co-benefits that healthy floodplains provide.

FEMA Response: FEMA appreciates the commenter's concerns but as explained in the preamble to the NPRM, 44 CFR part 9 only applies to FEMA actions. The FFRMS applies to grants for projects under FEMA programs such as IA, PA, and HMA, and grants processed by FEMA's GPD. All Federal agencies have their own requirements to implement the 8-step process and will utilize the Revised Guidelines for their own FFRMS implementation.

FEMA values the commenter's focus on the importance of nature-based approaches and will integrate these approaches where appropriate in actions under the 8-step process. FEMA-funded actions largely are identified by State and local applicants who design projects to meet their own communities' needs, which may include floodplain and wetland restoration. However, FEMA's mission extends beyond these actions, and the agency cannot eliminate the need to consider other types of actions such as the repair and replacement of public structures and facilities, such as schools and roadways. When evaluating such actions, FEMA will consider the practicability of nature-based approaches consistent with this rule.

Comment: One commenter also stated support for FEMA's use of nature-based solutions in the rule but stated the lack

of examples and lack of a clear hierarchy when choosing among available solutions could diminish the impact of the agency's requirement. The commenter recommended FEMA require that alternatives protect and/or restore natural features and ecosystem processes to the maximum extent possible before resorting to other means; that nature-based approaches be incorporated to the maximum extent possible after maximizing protection and/or restoration of natural features and ecosystem processes; and allowing use of grey infrastructure only after nature-based options were deployed to the maximum extent possible. Another commenter wrote that where avoidance was not possible, landscape-level resilient design including green infrastructure and nature-based solutions should be incorporated meaningfully, even for activities that may not adversely impact floodplain function, to benefit and improve the resilience of surrounding communities. A third commenter recommended FEMA encourage and incentivize higher functioning nature-based approaches on acquired properties, stating that mitigation project applicants were often encouraged to simply grade and seed a parcel leaving ongoing maintenance concerns with only a minimal natural benefit. This commenter also requested that FEMA require documentation on the nature-based approaches considered and justification for the inclusion or exclusion. Finally, another commenter recommended that FEMA incorporate more information on when and why nature-based solutions would be appropriate alternatives to consider in Steps 3 and 6 and highlight best practices, such as wetlands preservation. The commenter added that part 9 should more specifically and clearly promote these approaches to ensure that FEMA consistently identified and pursued opportunities to restore natural and beneficial floodplain functions within or near the project site as a part of potential risk mitigation strategies. The commenter recommended FEMA add a subsection to § 9.11 discussing the benefits of these measures and specifying approaches that could be incorporated into project plans.

Two commenters recommended FEMA revise § 9.9(b)(2) to specifically identify wetlands restoration and preservation as a uniquely valuable complement or alternative to grey infrastructure. Another commenter requested FEMA incorporate stronger language on when and how to apply nature-based solutions and to highlight

best practices, such as wetlands preservation.

FEMA Response: FEMA does not believe the final rule requires revision. FEMA's actions are focused on protection of life, safety, and improved property and FEMA does not typically fund actions that solely protect natural features and ecosystems. As such, FEMA is not necessarily taking actions where alternatives to protect natural features and ecosystem processes to the maximum extent possible are appropriate before resorting to other means. FEMA believes the commenter's concerns regarding wetlands preservation are already addressed in this final rule. Wetland conservation and restoration would be included under natural systems, ecosystem processes, and nature-based approaches provided in § 9.9(b)(2) as amended in this final rule. Additionally, the existing practicability factors set forth in § 9.9(c), including the natural environment factor, is sufficient to address the commenter's concerns.

FEMA prefers not to limit the regulatory text and instead provide additional information through FFRMS implementation resources to address the commenter's concerns. As explained above, the FFRMS policy does provide more information on the criteria to satisfy the use of natural features and nature-based approaches and FEMA plans to provide additional resources. These resources will incorporate additional examples of and information on nature-based approaches, such as the value of Indigenous knowledge and Traditional Ecological Knowledge (TEK). Where both a nature-based solution and a grey infrastructure solution are practicable, FEMA plans to generally prioritize the nature-based solution over a grey infrastructure solution as the commenter recommends. In addition, FEMA's FFRMS policy clarifies that nature-based approaches can also be incorporated as minimization measures where they are not possible as a practicable alternative. Further, as explained above, FEMA's procedures for review of its actions under part 9 include documenting the 8-step process and will incorporate documentation of nature-based solutions considered as part of that process. FEMA will distribute additional resources for the public and SLTTs as detailed above to further assist applicants when applying for FEMA programs.

Comment: Another commenter asked how FEMA would determine when nature-based solutions should be used. The commenter stated the FHWA and many State DOTs were developing or

had developed their own guidance for these items for riverine and tidal environments and that those agencies should be allowed to use their policies to fit specific projects.

FEMA Response: FEMA appreciates the commenter's concerns but as explained in the preamble to the NPRM, 44 CFR part 9 only applies to FEMA actions. The FFRMS applies to grants for projects under FEMA programs such as IA, PA, and HMA, and grants processed by FEMA's GPD. All Federal agencies have their own requirements to implement the 8-step process and will utilize the Revised Guidelines for their own FFRMS implementation.

FEMA's approach for facilities is meant to be flexible. As section G.2 of FEMA's FFRMS policy states "[t]he FFRMS is a resilience standard . . . Resilience measures include using structural or nonstructural methods to reduce or prevent damage; elevating a structure; or, where appropriate, designing it to adapt to, withstand and rapidly recover from a flood event."²⁴²

Comment: A commenter wrote to commend FEMA for incorporating reduced discount rates in the cost-benefit analysis of nature-based solutions. The commenter requested FEMA continue bolstering accountability in the assessment process by requiring practitioners to clearly describe the nature-based alternatives that were considered, and in cases where they are ultimately deemed not practicable, to provide an explanation and analysis for their reasoning as part of the final rule.

FEMA Response: FEMA appreciates the commenter's support and will continue to provide guidance to help communities recognize and capture the long-term benefits of nature-based solutions and all resilience actions in evaluating practicable alternatives and analyzing projects for cost-effectiveness.

FEMA's regulation and policy require the incorporation of nature-based approaches to the extent possible. In addition, FEMA's FFRMS policy clarifies that nature-based approaches can also be incorporated as minimization measures where they are not possible as a practicable alternative. As explained above, FEMA's procedures for review of its actions under part 9 include documenting the 8-step process and will incorporate documentation of nature-based solution consideration as part of that process.

Comment: A commenter requested FEMA more explicitly emphasize the protection and restoration of floodplain functions and nature-based alternatives

when taking Federal actions in the floodplain by adopting rules that define the values of floodplains, the ecosystem processes or functions of floodplains that generate those values, and the attributes that are necessary for a floodplain to be "functional." The commenter stated FEMA's rule failed to adequately describe the bio-geomorphology of a functional floodplain and the physical attributes of the floodplain necessary to obtain those values.

FEMA Response: FEMA appreciates the commenter's suggestion to integrate bio-geomorphology and attributes of functional floodplains into the regulation but does not believe additional changes are appropriate to the final rule or FFRMS policy based on the commenter's concerns. FEMA's definition of the floodplain in this rule is generally consistent with the definition of floodplain in the NFIP and with FEMA and other agencies' historic approach to such definitions and is intentionally broad to help ensure the agency can meet the needs of the action and protecting floodplains and wetlands consistent with Executive Order 11988, as amended. For application of the FFRMS, FEMA defines specific floodplains in part 9 as using one of the approaches detailed in the FFRMS policy.

Concurrently, FEMA conducts other environmental and historic preservation reviews to determine whether proposed actions could have other impacts to or within floodplains and wetlands. FEMA is incorporating nature-based solutions into resilience efforts where appropriate and believes the final rule will help accomplish this goal. FEMA's regulation and policy do require the incorporation of nature-based approaches to the extent possible. In addition, FEMA's FFRMS policy clarifies that nature-based approaches can also be incorporated as minimization measures where they are not possible as a practicable alternative.

Comment: A commenter stated nature-based design elements and nature-based solutions allowed a structure to actively provide carbon sequestration, decrease the magnitude and frequency of maintenance leading to increased structural lifespan. The commenter recommended FEMA incorporate this alternative to traditional concrete as a nature-based solution to serve as a mitigation measure and design alternative.

FEMA Response: FEMA will use a range of nature-based solutions where possible and on a case-by-case basis depending on the project. Project location, including whether coastal or not, will be a factor in determining the

types of available nature-based solutions FEMA may implement.

L. Other 8-Step Process Comments

1. Generally

Comments: One commenter provided recommendations to encourage resilient design. The commenter supported FEMA's proposed changes to §§ 9.9 and 9.11, which in the commenter's view would increase climate resilience, but recommended FEMA require that the alternatives analysis process incorporate the consideration of an array of flood mitigation practices and feedback from state and local leaders. The commenter requested changes to §§ 9.9 and 9.11 to emphasize the effectiveness and benefits of landscape-level methods as effective alternatives to increase flood resilience and as mitigation for projects with no practical alternatives outside of the floodplain and incorporate landscape-level design strategies in developing alternatives. The commenter requested FEMA consider existing State, local, and non-governmental resilient design guidelines for the agency's own guidance and requested FEMA work with other Federal agencies to develop case studies and examples of projects that achieve appropriate resilience metrics in lieu of or in addition to elevation. Another commenter requested FEMA look for impacts beyond the project boundaries and requested FEMA consider off-site impacts and mitigation measures. The commenter recommended the rule's implementation and guidance emphasize the effectiveness and benefits of landscape-level practices that encompass the full property, not just the physical building site, to mitigate flood impacts for projects with no practical alternatives outside of the FFRMS floodplain. The commenter requested FEMA offer guidance to include development practices, such as No Adverse Impact or low-impact development, and landscape features and that any guidance should encourage projects to assess opportunities to restore the natural and beneficial functions of the floodplain and wetlands within or near the project site as a part of potential risk mitigation strategies.

FEMA Response: FEMA agrees that the rule will increase climate resilience. FEMA's current alternatives analysis process incorporates consideration of a range of flood mitigation practices. FEMA considers the following alternatives: (a) no action; (b) alternative locations; and (c) alternative actions, including alternative actions that use natural features or nature-based

²⁴² See FFRMS policy, pg. 8.

solutions. Where possible, nature-based solutions, including those at the landscape-level, shall be used. Where natural features and nature-based solutions are not practicable as an alternative on their own to meet the needs of FEMA applicants, natural features and nature-based solutions may be incorporated into actions as minimization measures.

As explained above, the flood minimization measures found in § 9.11 are reliable methods of providing resilience to structures. FFRMS flood resilience measures consider both current and future flood risks to better protect Federal investments. The elevation requirement in § 9.11(d)(3) applies to structures and also allows floodproofing for non-residential structures. The FFRMS policy provides further explanation that structures that must be located within the FFRMS floodplain must be elevated or floodproofed to the FFRMS flood elevation. Additionally, the policy clarifies further that facilities can use elevation or any other appropriate minimization measure to protect the facility against the FFRMS flood elevation.

FEMA does not believe the final rule requires edits to address the commenters' concerns. As the commenter notes, FEMA's policy provides more detail on how the agency will implement nature-based solutions, and FEMA believes this level of detail is best provided in policy and additional resources rather than directly in the regulatory text.

As explained above, communities provide input into the floodplain determination for part 9. Pursuant to 44 CFR 9.11(d)(6), a more restrictive Federal, State, or local standard will be used. This includes the use of local CISA data and methods that have been adopted by a community for use in floodplain management, as long as such data results in a more restrictive standard. FEMA values additional input from SLTT partners and the public in the 8-step process. Projects subject to FFRMS are frequently designed by such partners and will continue to be designed to meet local needs as appropriate.

FEMA will distribute additional resources for the public and SLTT partners identifying what the FFRMS is, and how the agency will implement the Executive Orders. These resources will help applicants as they apply for FEMA-funded assistance programs. FEMA will also provide technical assistance through the agency's regional offices in support of FFRMS implementation.

Comment: A commenter requested FEMA consider the life of the project when making flood risk protection decisions and emphasize the life of the project in the 8-step process, not just in the footprint of the project but its impact on the surrounding area. The commenter also requested the analysis of practicable alternatives result in an adequate assessment and documentation of the life cycle impacts of nature-based approaches and natural features.

FEMA Response: As explained further in the FFRMS Job Aid,²⁴³ service life is considered in the determination of the FFRMS floodplain using CISA. Additionally, in the 8-step decision-making process FEMA considers whether a proposed action would be located within and whether it would affect a floodplain or wetland; FEMA avoids Federal actions in floodplain and wetland locations unless they are the only practicable alternatives and are able to minimize harm to and within floodplains and wetlands.

Further, the service life of the project is considered as part of the practicability analysis, including consideration of maintenance requirements. FEMA's procedures for review of its actions under part 9 include documenting the 8-step process and will incorporate documentation of nature-based solution consideration as part of that process.

2. Wetlands Identification and Floodplain and Wetlands Preservation

Comments: Some commenters requested additional clarification or provided recommendations regarding how FEMA identifies and preserves wetlands as part of the 8-step process. Four commenters requested FEMA improve wetlands identification in the 8-step process. One commenter noted that FEMA reviewers currently consulted additional sources of information only if other listed sources provide inadequate information, which could mean a FEMA reviewer would stop the assessment after consulting the National Wetlands Inventory ("NWI"). The commenter stated the NWI was only one imperfect source and could not provide a definitive determination, as the NWI documented only the presumed presence of wetlands on a site and did not accurately capture the full delineation of wetlands at ground-scale. Two of the commenters requested FEMA update the regulatory text by

²⁴³ Available at <https://www.regulations.gov/document/FEMA-2023-0026-0004> and https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf (last accessed Jan. 24, 2024).

directing reviewers to conclude the assessment of whether or not an action was in a wetland after consulting each of the four sources of information. Two other commenters agreed stating the determination of the presence or absence of a wetland in the project site should not be based solely on the NWI because of the NWI's tendency to underestimate actual wetland areas. Those commenters recommended FEMA encourage consulting various sources beyond NWI. One commenter noted that involving a trained wetland delineator to assess wetland indicators (soil, vegetation, hydrology) and delineate wetland boundaries was crucial to prevent the loss of critical wetlands, especially considering their role in flood water storage.

FEMA Response: FEMA did not change the existing regulation or process for identifying wetlands. FEMA relies on the NWI to identify wetlands for the purposes of applying the 8-step process under 44 CFR part 9 but will also accept other determinations as provided by regulatory agencies or applicants. FEMA does utilize information from on-site evaluations, including for locations not included in the NWI; however, requiring an on-site evaluation of the presence of wetlands for every potential action would severely delay the provision of disaster assistance to impacted communities.

FEMA is not changing the current process in step 4 in this rulemaking and the implementation of the FFRMS would only expand the floodplain of consideration in step 4 of the 8-step process. FEMA did not eliminate consultation with the edits made to § 9.10. The edits made to § 9.10 are to the factors used to identify the impacts to proposed actions. Those edits were made for consistency with other edits made in the rule. Specifically, FEMA defines "natural and beneficial values of floodplains and wetlands" to mean the features or resources that provide environmental and societal benefits. FEMA added additional clarification that water and biological resources are often referred to as "natural functions of floodplains and wetlands" and also incorporated additional clarifying examples of water resource values, living resource values, cultural resource values, and cultivated resource values for more consistency with the Revised Guidelines and Executive Order 11988, as amended. FEMA also edited paragraph § 9.10(d)(2) for consistency with edits made in § 9.4 defining the natural and beneficial values of floodplains and wetlands.

Comment: One commenter requested FEMA take action to preserve wetlands

in this rulemaking, requesting FEMA prioritize wetlands preservation and prevent harm to wetlands to the greatest extent of the agency's authorities. The commenter recommended FEMA prioritize policy solutions that incentivize and fund the preservation of all remaining wetlands and look to climate-smart wetland restoration to maximize benefits. Noting the recent Supreme Court decision in *Sackett v. EPA*,²⁴⁴ the commenter requested FEMA act through this rulemaking to provide whatever protection it can for wetlands. The commenter explained the permitting process under section 404 of the Clean Water Act prior to the Supreme Court decision for filling wetlands and stated the *Sackett v. EPA* decision²⁴⁵ limited the scope of section 404.

The commenter requested FEMA incorporate prohibitions on certain types of activities in wetlands similar to prohibitions on certain types of activities in floodplains and provided the example of prohibiting HMA funding for new construction or substantial improvements in a floodway or new construction in a coastal high hazard area unless the action constituted a functionally dependent use or facilitates an open space use. The commenter suggested FEMA add language to § 9.11(d)(1) to prohibit new construction and substantial improvement in a wetland, except for a functionally dependent use; or a structure or facility which facilitates an open space use and also requested FEMA amend the HMA and PA Policy and Program Guides to reflect these changes.

Two commenters requested FEMA add language to the regulatory text regarding the agency's requirement to restore and preserve both floodplains and wetlands. One commenter wrote this requirement was implemented in § 9.11(f), where FEMA established that if an action harmed or degraded a floodplain or wetland, the agency must implement measures to restore the natural and beneficial values; however, the commenter stated FEMA did not provide direction on the measures to be used and the extent to which the natural and beneficial values must be restored. The commenter recommended FEMA provide the criteria that would satisfy the restore and preserve requirement in the regulatory text or in associated guidance. The commenter also recommended FEMA require federal actions result, as fully as possible, in no net loss of both acreage and function for

floodplains and wetlands. The commenter recommended FEMA require the type and extent of mitigation that applicants must undertake to satisfy the "restore and preserve" language where floodplains and wetlands were known to be negatively impacted. Another commenter requested FEMA add "or restore" after "preserve" in all the appropriate places in the regulatory text.

FEMA Response: FEMA believes the commenters' regarding wetlands preservation concerns are addressed by the existing regulation. As stated in § 9.2(d) and § 9.11(e), FEMA's policy is to preserve and enhance the natural values of floodplains and wetlands when the agency has the opportunity to do so. FEMA's longstanding requirements in the final rule at 44 CFR 9.11(e) outline the agency's requirements to restore and preserve the natural and beneficial values served by floodplains and wetlands. FEMA does not believe additional changes to the regulatory text or FFRMS policy are needed to achieve the commenters' goal of wetlands preservation.

FEMA did not propose to change the way that the 8-step process is applied to wetlands, and is not doing so in this final rule. FEMA notes the definition of wetlands in 44 CFR 9.4 has always been much broader than that under the Clean Water Act (CWA). Thus, under current practice the 8-step process has been applied to wetlands regardless of their jurisdictional status under the CWA. FEMA believes this commenter's concerns are already addressed by the existing regulation.

Additionally, FEMA understand the first commenter's desire to prohibit certain actions in wetlands but again believes the current 8-step process adequately addresses the commenter's concerns. In the 8-step decision-making process, wetland sites are avoided where possible. FEMA takes no action in a wetland unless the importance of the wetland site clearly outweighs the requirements to²⁴⁶:

- (i) Avoid the destruction or modification of the wetlands;
- (ii) Avoid direct or indirect support of new construction in wetlands;
- (iii) Minimize the destruction, loss or degradation of wetlands; and
- (iv) Preserve and enhance the natural and beneficial values of wetlands.

FEMA notes the 8-step process governs FEMA actions and the *Sackett* case does not apply in this context. While FEMA does consider new construction in wetlands, to include the placement of fill, and will also consider

alternatives, the 8-step process is not an authorization or permitting process. Additionally, FEMA notes the process is only applicable to actions funded or performed by FEMA and not more broadly applicable to actions performed by SLTTs or individuals using non-Federal funding.

The revisions to part 9 in this final rule do not change FEMA's long-standing requirement as part of FEMA's implementation of Executive Order 11988, as amended, and Executive Order 11990 to only perform or fund actions within or affecting wetlands if those actions are the only practicable alternative. FEMA considers alternative locations, alternative actions, nature-based solutions, and the no action alternative under the practicability analysis and will only perform or fund the action when there are no practicable alternatives. FEMA will minimize any adverse impacts when doing so. FEMA believes the commenter's concerns requesting revisions to § 9.11(d)(1) to add prohibitions on specific actions in wetlands are unwarranted given the agency's long-standing process that is not changing as a result of the changes made in this final rule or FFRMS policy.

FEMA's mission is to help people before, during and after disasters. While this focus on saving life and property allows for the restoration and preservation of the natural and beneficial values served by floodplains and wetlands, that is not the primary mission of the agency. Accordingly, the majority of FEMA's actions within floodplain or wetlands for repairs, replacement, or mitigation of risk to existing structures and facilities. Requiring no net loss in area or function of floodplains or wetlands would limit the agency's ability to assist disaster-impacted communities, as well as reduce risk within those communities. Additionally, requiring mitigation from disaster-impacted communities may prolong or inhibit their recovery process. FEMA instead relies on the alternatives analysis required by 44 CFR part 9 and takes no action within floodplains or wetlands unless there is no practicable alternative.

FEMA recognizes the concerns of commenter seeking edits to the regulation and guidance to provide criteria to satisfy the restore and preserve requirement, but again disagrees that such edits are necessary in regulatory text or the FFRMS policy to achieve the goals of floodplain and wetlands restoration and preservation. FEMA notes that in this rulemaking the agency did not make changes to the restore and preserve requirements in former § 9.11(e) other than updating the

²⁴⁴ *Sackett v. EPA*, 598 U.S. 651 (2023).

²⁴⁵ *Sackett v. EPA*, 598 U.S. 651 (2023).

²⁴⁶ See 44 CFR 9.9(e)(3).

numbering (this rule moves former § 9.11(f) to § 9.11(e)). FEMA will provide additional information and implementation resources to SLTT partners, stakeholders, and the public as part of the FFRMS implementation and will consider the commenter's suggestions regarding additional information on the criteria to satisfy the requirements of new § 9.11(e) when finalizing those resources. FEMA will also consider issuing further guidance through the agency's grant programs on this point.

Regarding another commenter's request to add "or restore" after "preserve" throughout the regulatory text, FEMA notes that the regulatory text is consistent with the long-standing policy outlined in 44 CFR 9.2.

Specifically, it is the agency's policy to "restore and preserve the natural and beneficial values served by floodplains" and "preserve and enhance the natural values of wetlands." Where floodplains are addressed in the regulatory text, "restore and preserve" is used, whereas "preserve" is used for wetlands, except for § 9.11(e)(3), which combines the two priorities more broadly in relation to natural and beneficial values of floodplains and wetlands. This language is consistent with Executive Order 11988, as amended, which directs agencies to "restore and preserve the natural and beneficial values served by floodplains," and Executive Order 11990, which directs agencies to "preserve and enhance the natural and beneficial values of wetlands." FEMA notes that the language in Executive Order 11990 omits "restore" in connection to wetlands.

3. Public Notice

Comments: Some commenters requested additional edits to the public notice requirements of the 8-step process. One commenter requested more specific guidance about the types and amount of information the notice would provide and the extent to which impacts will be identified and explained to the public and recommended FEMA revise the regulation to require FEMA to make site maps electronically available with the rest of its public notice. Two commenters requested the rule encourage community engagement and community-led planning by requiring early engagement with affected communities to understand the parameters of risks and vulnerabilities with engagement extending into the project design and implementation. The commenter requested public engagement go beyond the existing notice requirements to mandate proactive and meaningful outreach to

affected communities, allowing communities to provide input that engineers and developers may not have and improving the overall flood risk knowledge of communities. A third commenter recommended FEMA incorporate language to § 9.6 and § 9.8 to codify an emphasis on environmental justice by providing notice to individuals with limited English proficiency and individuals with disabilities, as well as communities or groups of people who are potentially affected and who are not regular participants in Federal decision-making. Two other commenters agreed with the recommendation for access to individuals with limited English proficiency.

FEMA Response: FEMA is not updating significant portions of the public notice process in this rulemaking, as FEMA does not believe the current notice process is inadequate. However, FEMA did update § 9.8(c)(4)(i) to incorporate notice through the internet or another comparable method. During the public notice process, FEMA will also provide links to electronic versions of relevant maps.

FEMA does accept public comments on proposed actions during both the early and final public notice periods, addressed in §§ 9.8 and 9.12. Early public notice allows the public to provide initial input on alternatives to be considered and potential issues with a proposed action, which may include specific measures to minimize flood risk. The final public notice allows for the public to review the decision-making process conducted by the agency and provide any input before the action is taken. FEMA notes community planning, such as hazard mitigation planning, can inform the 8-step process.

FEMA notes this final rule does not apply to a local community's permitting processes under the NFIP's floodplain management regulations. Those regulations are found at 44 CFR part 59 *et seq.* FEMA defines "action subject to the FFRMS" as "any action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility." The FFRMS applies to grants for projects funding the new construction, substantial improvement, or repair of substantial damage under FEMA programs such as IA, PA, and HMA programs, and grants processed by FEMA's GPD.

FEMA routinely translates agency materials into languages other than English as appropriate²⁴⁷ and consistent

²⁴⁷ FEMA's website has information and materials available in languages other than English, including

with FEMA's Language Access Policy.²⁴⁸ Specifically incorporating this policy into the rulemaking is not necessary, as FEMA's process is set forth in the Language Access Policy.²⁴⁹ That policy governs how the agency would handle written translations, as appropriate and consistent with Executive Order 13166, Improving Access to Services to Persons with Limited English Proficiency, the DHS Language Access Plan, and Section 308 of the Stafford Act, 42 U.S.C. 5151, as applicable. In accordance with those existing requirements, FEMA ensures appropriate translations of public notices for the 8-step process.²⁵⁰ FEMA also ensures individuals with disabilities have effective communication access to FEMA programs and activities, consistent with requirements under sections 504 and 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794, 794d, and FEMA's Section 504 Implementation Plan.²⁵¹

Comment: One commenter requested FEMA implement a public tracking system of all FEMA actions that are subject to part 9. The commenter stated a tracking system would ensure the public could assess the cumulative impacts of a proposed action. The commenter also requested FEMA accept public comment on proposed actions.

FEMA Response: FEMA does accept public comments on proposed actions during both the early and final public notice periods, addressed in §§ 9.8 and 9.12. Early public notice allows the public to provide initial input on alternatives to be considered and potential issues with a proposed action.

Spanish, French, German, Arabic, Hausa, Vietnamese, Portuguese, Chinese, Japanese, Hindi, Myanmar (Burmese), Korean, Nepali, Somali, Swahili, Tagalog, Tongan, Creole, Fijian, and Russian. See <https://www.fema.gov/disaster/recover/languages> (last accessed Mar. 28, 2024).

²⁴⁸ FEMA Policy FP-256-23-001, available at https://www.fema.gov/sites/default/files/documents/fema_policy-language-access.pdf (last accessed Mar. 27, 2024).

²⁴⁹ FEMA's Language Access Policy requires the agency to have processes in place to regularly identify and assess the language assistance needs of the public and requires written translation of vital documents in languages other than English based on assessments of need and capacity. See Principles A. and C. of the policy available at https://www.fema.gov/sites/default/files/documents/fema_policy-language-access.pdf (last accessed Mar. 27, 2024).

²⁵⁰ See e.g. "FEMA Public Notice: 4618-DR-PA-Pennsylvania Individual Assistance, Public Assistance and HMGP" available at <https://www.fema.gov/disaster/4618/publicnotice> (last accessed June 11, 2024); "DR-4673-FL EHP Public Notice 001" available at <https://www.fema.gov/disaster-federal-register-notice/dr-4673-fl-ehp-public-notice-001> (last accessed June 11, 2024).

²⁵¹ FEMA Section 504 Implementation Plan, available at https://www.fema.gov/sites/default/files/2020-06/fema_section-504-implementation-plan.pdf (last accessed Mar. 27, 2024).

The final public notice allows for the public to review the decision-making process conducted by the agency and provide any input before the action is taken. The agency has updated the rule to allow for electronic notification of public notices to increase accessibility to the public.

FEMA appreciates the commenter's suggestion that the agency provide a public tracking system for part 9. FEMA provides data on actions taken by the agency through the OpenFEMA Data Sets.²⁵² FEMA is not proposing any additional systems of record with this rulemaking.

4. Impacts to Floodplains and/or Wetlands

Commenters provided feedback on FEMA's review of and requirements regarding impacts to floodplains and/or wetlands in part 9. While one commenter provided support for the rule's prohibition against locating a proposed action in a floodplain or wetland if a practicable alternative exists outside the floodplain or wetland in proposed §§ 9.6(b)(3) and 9.9(d)–(e) and agreed with FEMA's approach of first avoiding impacts, then minimizing any impacts that must occur, and restoring impacted areas, other commenters provided recommendations for additional edits to the regulatory text.

Comment: One commenter requested FEMA revise § 9.10 to require consideration of disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative.

FEMA Response: FEMA appreciates the commenter's concerns regarding equity and environmental justice. The agency incorporates natural environment, social concerns, and economic aspects into the 8-step process as part of the practicability analysis (addressed in 44 CFR 9.9). FEMA's revisions to part 9 reflect consideration of the type and criticality of the action involved, the availability and actionability of the data, and equity concerns in the implementation of Executive Order 11988, as amended. FEMA also has an agency-wide initiative focused on reducing barriers and increasing opportunities so all people, including those from vulnerable and underserved communities, can get help when they need it.²⁵³

The impact analysis addressed in § 9.10 focuses on impacts to and from floodplains and wetlands associated with a proposed action. As part of the evaluation of impacts, FEMA considers the impacts addressed in § 9.10(d), which include factors that evaluate the impact of flooding on public health, safety, and welfare. In addition to this evaluation of flood hazard, FEMA reviews all proposed FEMA-funded actions for potential disproportionate and adverse human health and environmental effects on communities with environmental justice concerns using a standardized environmental justice compliance review process. FEMA believes these current practices address the commenter's concern, and revisions to the final rule are not necessary.

Comment: One commenter requested FEMA identify both the impacts on the floodplain and also the watershed in Step 4. The commenter noted that the subsequent steps in the process described consideration of this. The commenter also requested FEMA articulate and follow a "no adverse impact" principle. The commenter requested FEMA specifically address cumulative impacts of an action, as this is especially important when assessing flood impacts, as development actions and land use changes in a watershed would alter the floodplain.

FEMA Response: FEMA is not changing the current process in step 4 in this rulemaking. The implementation of the FFRMS would only expand the floodplain of consideration in step 4 of the 8-step process. The changes made in § 9.10 are intended as clarifying edits for consistency with other FFRMS implementing edits and are not substantive policy changes. FEMA did not propose the policy changes suggested by the commenter, and FEMA may take them under consideration in the future. Note that under step 1, FEMA considers whether proposed actions can impact or be impacted by a floodplain or wetland, not just whether or not the proposed action is located in a floodplain or wetland. This provision addresses the commenter's concerns regarding actions in the watershed impacting floodplains and wetlands.

Comment: Another commenter requested FEMA retain the language in current § 9.10(c) stating that "Regional Offices of the U.S. Fish and Wildlife Service may be contacted to aid in the identification and evaluation of potential impacts of the proposed action on natural and beneficial floodplain and wetland values." The commenter stated that given USFWS's particular expertise in understanding coastal and wetland

ecosystems, and the importance of maintaining the natural beneficial values of these habitats, the commenter recommended retaining the consultation language "rather than merely stepping it down to guidance."

The commenter further recommended FEMA strengthen the language and require FEMA at least contact the USFWS when making any such evaluation in case the USFWS had concerns about or special understanding of the values of those habitats, including for threatened and endangered species.

FEMA Response: FEMA is not changing the current process in step 4 in this rulemaking and the implementation of the FFRMS would only expand the floodplain of consideration in step 4 of the 8-step process. This rule does not eliminate consultation with the edits made to § 9.10, as the existing regulatory text merely states the agency "may" contact the USFWS for impact identification on the natural and beneficial values of floodplains and wetlands. The edits made to § 9.10 removes this optional, internal U.S. government process from the regulation; the process will be further outlined in guidance. FEMA notes this section did not address FEMA's consultation requirements under the Endangered Species Act.

In this final rule, FEMA updates the definition of "natural and beneficial values of floodplains and wetlands" to include consideration of features or resources that provide environmental and societal benefits. The definition also includes examples of what "natural functions of floodplains and wetlands" means. FEMA does not believe additional edits to the final rule are required to address the commenter's concerns regarding coastal and wetland ecosystems and habitats for threatened and endangered species, because these concerns are addressed in the definition at 44 CFR 9.4. The definition provides some examples but is not all inclusive, and FEMA will consider providing additional examples in guidance to further clarify and address the commenter's concerns.

FEMA edited § 9.10(d)(2) for consistency with edits made in § 9.4 defining the natural and beneficial values of floodplains and wetlands. Specifically, the edits to § 9.10(d)(2) add providing habitats and enhancing biodiversity under the living resource values FEMA will consider in step 4 of the 8-step process. In step 4, FEMA determines impacts to the floodplain, which include changes to the hydraulics and hydrology of the floodplain which informs potential impacts to protected species and their critical habitats. FEMA

²⁵² See FEMA, OpenFEMA Data Sets, <https://www.fema.gov/about/openfema/data-sets> (last accessed Mar. 25, 2024).

²⁵³ See <https://www.fema.gov/emergency-managers/national-preparedness/equity> (last accessed Jan. 24, 2024).

will continue to perform Section 7 consultation under the Endangered Species Act as required. FEMA reviews all applicable actions under the Endangered Species Act, and such reviews are coordinated with the 8-step decision-making process.

Comment: While a commenter expressed appreciation of FEMA's recognition of the processes of storing floodwater and groundwater recharge, the commenter recommended the rule clarify that floodwater storage and groundwater recharge may have functions that extend beyond the time and area of a flood (such as the base flood). The commenter stated floodwater storage and groundwater infrastructure placed in the floodplain may result in continued inundation of floodplain areas. However, those types of infrastructure may be required to convey stored floodwater to groundwater recharge sites, minimizing impacts of flooding within the floodplain.

FEMA Response: Through the 8-step process, FEMA considers the impacts to and from the floodplain including the natural and beneficial functions of the floodplain and actions which may support development within the floodplain. Additional clarifications are not required in the regulatory text to address the commenter's concerns as the 8-step process resolves these concerns overall.

Avoidance

Comments: Some commenters requested FEMA prioritize avoidance of floodplains and wetlands as part of this rulemaking and FFRMS policy. Two commenters wrote a primary intent of Executive Orders 11988, as amended, and 11990 was avoidance of floodplains and wetlands development and stated avoidance was the most effective risk reduction strategy. Some commenters recommended FEMA issue guidance, with one comment recommending the guidance describe how regional offices should review projects post-*Sackett v. EPA*,²⁵⁴ and strengthen the practicable alternatives analysis. Another commenter requested that the agency incorporate FFRMS guidance into PA and HMA guidance.

One commenter wrote the FFRMS was a process to assess the siting and design of a proposed action, rather than a mere elevation standard and requested FEMA promote avoidance as the preferred alternative to actions that would modify or occupy floodplains or wetlands. The commenter stated FEMA must consider design alternatives in

Step 3 of the 8-step process at § 9.9. Three commenters wrote elevation and floodproofing were often prioritized instead and requested FEMA prioritize avoidance as the first alternative to actions that would modify or compromise floodplain function as the most effective risk reduction strategy, rather than using elevation or floodproofing as first design alternatives. Two commenters agreed that FEMA should strengthen Step 3 in § 9.9 to emphasize avoiding federal actions in floodplains and wetlands where practicable.

FEMA Response: While FEMA made edits to § 9.2(d) to reorder the agency's actions to prioritize minimizing the impact of floods on human health, safety, and welfare in this part, those edits do not change FEMA's long-standing requirement as part of implementation of Executive Order 11988, as amended, to only perform or fund actions within or affecting floodplains if those actions are the only practicable alternative. *See, e.g.,* new 44 CFR 9.9(d). Through the 8-step process, FEMA will consider alternative locations, alternative actions, nature-based solutions, and the no action alternative under the practicability analysis. If there is no practicable alternative, FEMA may perform or fund the action and will minimize any adverse impacts when doing so. FEMA believes the commenters' concerns are unwarranted given this long-standing process that is not changing as a result of the changes made in this final rule.

FEMA agrees with one of the commenters that FFRMS is not merely an elevation standard. As section G.2 of FEMA's FFRMS policy states "[t]he FFRMS is a resilience standard. Particularly in cases where elevation may not be feasible or appropriate for facilities, the FFRMS floodplain, determined according to the process described in section C of this policy, establishes the level to which a structure or facility must be resilient. Resilience measures include using structural or nonstructural methods to reduce or prevent damage; elevating a structure; or, where appropriate, designing it to adapt to, withstand and rapidly recover from a flood event."²⁵⁵

As explained above, FEMA has not proposed changes to the way that the 8-step process is applied to wetlands. FEMA notes the definition of wetlands in 44 CFR 9.4 has always been much broader than that under the Clean Water Act (CWA). Thus, under current practice the 8-step process has been applied to wetlands regardless of their

jurisdictional status under the CWA. However, the 8-step process does not have the same requirements of Section 404 of the Clean Water Act. While FEMA does consider new construction in wetlands, to include the placement of fill, and consider alternatives, the 8-step process is not an authorization or permitting process.

As previously explained, FEMA will distribute resources for the public and SLTT partners and the public identifying what the FFRMS is, and how the agency will implement the Executive Orders to further assist applicants for FEMA-funded assistance programs. FEMA will also provide technical assistance through the agency's regional offices in support of FFRMS implementation. FEMA notes while the PA and HMA guidance documents are instructive to applicants, FEMA's regulations at 44 CFR part 9 control the agency's actions for all of FEMA's programs.

5. Zero/No Rise

Comments: Some commenters requested FEMA implement a "zero-rise" or "no rise" standard in the 8-step process. Four commenters stated that FEMA should require a "zero rise" standard for Federal actions where a regulatory floodway had not been designated. The commenters noted FEMA's edits to § 9.11 but recommended an additional edit to not permit any increase in flood levels when a regulatory floodway had not been designated.

Another commenter raised concerns about these requirements in the FFRMS policy. The commenter stated that the requirement for FEMA-regulated floodplains without a floodway in the FFRMS policy was unreasonable. The commenter wrote the requirement to include all anticipated development was challenging for applicants, as anticipated development might never happen or substantially change due to the project approval process and recommended limits be placed on what was included in the anticipated development to make the standard more reasonable.

FEMA Response: The changes made to § 9.11(d)(4) provide clarification that the agency will continue to require the NFIP's minimum standard (currently 1-foot rise) or, consistent with § 9.11(d)(6), a more restrictive standard adopted by a community. This has been a long-standing requirement of the NFIP.²⁵⁶ FEMA's edits help ensure consistency with the NFIP's minimum standard while allowing the flexibility to utilize

²⁵⁴ *Sackett v. EPA*, 598 U.S. 651 (2023).

²⁵⁵ *See* FFRMS policy, pg. 8.

²⁵⁶ 44 CFR 60.3(c)(10).

a community's own more restrictive standards.

FEMA did not propose to prohibit any increase in flood levels when a regulatory floodway has not been designated, and prefers not to make such a change at this stage of the rulemaking. The current process for determining increases in floodplains when a regulatory floodway has not been designated is consistent with the requirements of the NFIP and of many communities throughout the country. FEMA may take the commenter's suggestion under consideration in the future.

6. Prohibiting the Use of Fill

Comments: Some commenters also requested FEMA prohibit the use of fill for elevation in the 8-step process. Commenter requested FEMA consider the impacts of using fill to achieve elevation requirements. One commenter stated elevation could have damaging impacts if implemented without considering stormwater runoff and that using fill dirt to achieve floodplain elevation requirements could push stormwater onto surrounding areas and worsen or create flooding problems for adjacent properties. Another commenter stated that while intended to reduce flood risk, using fill dirt to achieve floodplain elevation requirements could exacerbate flooding in the surrounding area. This commenter also noted that placing fill in floodplains could severely impact floodplain and wetland ecosystems that are critical habitat for endangered species. Some commenters referenced a recent TMAC report that identified several concerns and perverse incentives from the use of fill to achieve elevation and recommended FEMA discourage the use of fill. Commenters requested FEMA revise § 9.11 to prohibit the use of fill to achieve elevation requirements in the FFRMS floodplain. Where fill is unavoidable, commenters requested FEMA require that a project retain the volume of water onsite that is equivalent to the volume of fill used or have adequate compensatory flood storage requirements. One commenter requested that in the Special Flood Hazard Area, FEMA require elevation to meet FFRMS requirements to be on an open foundation. Another commenter recommended that where the use of fill was necessary as a last resort, added measures should be required to replace the on-site ecosystem benefits of disturbed wetlands.

FEMA Response: FEMA appreciates the commenters' concerns regarding the use of fill and agrees that the impacts of its use must be considered. As part of

Step 4 where FEMA identifies impacts, the agency identifies any impacts to the floodplain which would include increasing flood risks to adjacent areas. In § 9.11(d)(4) and (d)(6), FEMA's minimization requirements ensure that fill within regulatory floodways or floodplains where no regulatory floodway is designated will generally not increase flood levels within the community. These minimization requirements ensure consistency with the NFIP or any more restrictive Federal, State, or local requirements. Until a regulatory floodway is designated, no fill is permitted within the base floodplain unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than the amount designated by the NFIP or the community, whichever is most restrictive.²⁵⁷ Under § 9.11(d)(4), fill is also prohibited within a designated regulatory floodway that would result in any increase in flood elevation within the community during the occurrence of the base flood discharge. FEMA prioritizes elevation on open works over elevation on fill in § 9.11(d)(7), requiring elevation on open works rather than on fill in coastal high hazard areas and elsewhere, as practicable.

The substance of the requirements in § 9.11(d) was not changed as part of this final rule. FEMA did not propose to prohibit elevation on fill as suggested by some of the commenters, and prefers not to implement such a change at this stage of the rulemaking. FEMA will remain cognizant of the potential impacts of use of fill as part of the project approval process as described above in the 8-step process, and may take the comments under consideration for further action at a future date.

The revisions to part 9 do not change FEMA's long-standing requirement as part of implementation of Executive Order 11988, as amended, to only perform or fund actions within or affecting floodplains and wetlands if those actions are the only practicable alternative. *See, e.g.,* new 44 CFR 9.9(d). No further edits are required to part 9 to address the commenter's concerns regarding fill in wetlands. As FEMA's current part 9 process currently prohibits actions in wetlands where there is a practicable alternative, fill and dredge practices to achieve elevation or to construct buildings/facilities in wetlands would only be allowed in those instances where there were no

alternatives and the need to perform the action outweighed agency's requirements outlined in 44 CFR 9.9(e)(2). New § 9.11(e) (current § 9.11(f)) requires restoration where applicable.

FEMA appreciates the commenters' reference to the recent TMAC recommendations on the use of fill. The TMAC recommended FEMA consolidate and clarify fill requirements for the NFIP in 44 CFR 60.3 and consider prohibiting the use of fill as an elevation technique for residential and commercial structures in the SFHA (both coastal and riverine); prohibiting fill as a floodproofing technique; and allowing a limited amount of fill for bridges, dams, and wastewater treatment facilities along with other uses functionally dependent on proximity to water. The TMAC also recommended that FEMA (1) require communities participating in the NFIP to quantify and put on file the impacts of proposed fill and other development on flood stages and the environment prior to issuing fill permits and (2) require notice to property owners and appropriate environmental agencies when increases in flood elevation or potential negative consequences were found and could not be mitigated.²⁵⁸ These recommendations are clearly focused on the NFIP, not the 8-step process in part 9 in this rulemaking. As described above, the 8-step process contains sufficient flexibility to allow FEMA to address concerns related to use of fill during Steps 4 and 5 of the process. While FEMA is considering these recommendations consistent with the NFIP requirements, the agency notes TMAC recommendations are not binding on FEMA.

Comment: One commenter wrote requesting that FEMA eliminate Letter of Map Change (LOMC) exceptions for sites. The commenter cited HUD's proposed rule and stated that an exception could incentivize adding fill in a floodplain, which could lead to a reduced floodplain function, as well as increased flood risk to surrounding properties.

FEMA Response: FEMA's regulation does not specifically except areas or sites where FEMA has issued a Letter of Map Change (LOMC) from the 8-step process. In their original regulation, HUD did have a specific exception for any non-wetland site in a floodplain for which FEMA had issued a final Letter of Map Amendment (LOMA), final

²⁵⁷ 44 CFR 9.11(d)(4).

²⁵⁸ See TMAC 2023 Interim Report, available at https://www.fema.gov/sites/default/files/documents/fema_rm-tmac-2023-interim-report-30OCT2023.pdf (last accessed Mar. 28, 2024).

Letter of Map Revision (LOMR), or a final Letter of Map Revision Based on Fill (LOMR-F) that removed the property from a FEMA-designated floodplain. The exception under HUD's original regulation also included conditional LOMAs, LOMRs, or LOMR-Fs if HUD or the responsible entity's approval was subject to the requirements and conditions of the conditional LOMA or LOMR.²⁵⁹ FEMA notes that HUD removed these exceptions from 24 CFR 55.12(c)(8)(i) and (ii) in recent updates to their regulation.²⁶⁰ As FEMA did not except those areas in the regulation, the FEMA rule does not require revision for the FFRMS floodplain to apply and for FEMA to conduct the 8-step process if those areas are determined to be within the expanded floodplain. FEMA notes the changes to part 9 in this final rule do not apply to the NFIP's regulations on mapping and changes to FEMA maps. Those regulations are found at 44 CFR part 70 *et seq.*

7. Practicability

Commenters also recommended changes to the practicability analysis in the 8-step process.

Comments: A commenter stated concern that actions in floodplains and wetlands would be allowed only as a last resort under the rule and recommended that FEMA revise the regulations to more strongly clarify to officials implementing the regulations that actions in floodplains, especially those on already urbanized lands, could be allowed, provided flood resilience measures were employed. Conversely, another commenter recommended that FEMA prioritize avoidance as the first alternative to actions that would modify or compromise floodplain function as the most effective risk reduction strategy. The commenter recommended that where avoidance cannot be achieved, resilient design should be incorporated meaningfully. A third commenter stated the feasibility analysis should consider whether right-of-way is not available and condemnation is required.

FEMA Response: The revisions to part 9 do not change FEMA's long-standing requirement as part of implementation of Executive Order 11988, as amended, to only perform or fund actions within or affecting floodplains if those actions are the only practicable alternative. *See, e.g.,* new 44 CFR 9.9(d). This rule does not alter the 8-step process requirement to evaluate practicable alternatives,

which includes consideration of locations outside of the floodplain or wetlands. Through the 8-step process, FEMA considers alternative locations, alternative actions, nature-based solutions, and the no action alternative under the practicability analysis. If there is no practicable alternative, FEMA will perform or fund the action and will minimize any adverse impacts when doing so. FEMA believes the commenters' concerns are unwarranted, given this long-standing process that is not changing as a result of the changes made in this final rule. Further, the practicability factors, which are outlined in 44 CFR 9.9(c), include the consideration of legal constraints, which would generally encompass the acquisition of right-of-way for proposed actions.

Comment: A commenter requested specific revisions to § 9.9 to include "the presence of threatened or endangered species or their critical habitat" as an example under "natural environment." The commenter also requested FEMA include "the presence, absence, and/or effectiveness of local or state land management plans to conserve natural values of the floodplains and wetlands at issue." Finally, this commenter requested FEMA include "participation of the impacted community or communities in the Community Rating System program" when analyzing the practicability of alternatives to proposed actions in floodplains or wetlands. The commenter requested FEMA edit § 9.9 to include examples of floodplain values, including "wildlife habitat and connectivity, including for threatened and endangered species" in § 9.9(e)(2)(iv) and § 9.9(e)(3)(iv).

FEMA Response: FEMA respectfully declines the commenter's request, as the agency believes many of these examples would be covered under the existing regulatory text, and no edits are required in this final rule to address these concerns. Specifically, the final rule lists "natural environment" and includes "habitat," which addresses the commenter's concerns about the inclusion of threatened and endangered species or their critical habitat. "Social concerns" includes "land patterns;" under these factors, FEMA does consider local or state land management plans when considering practicability. FEMA appreciates the commenter's interest in the agency's Community Rating System (CRS) program. FEMA notes that the commenter's concerns regarding threatened and endangered species and their critical habitats is addressed in the CRS program through credits for communities that protect

threatened and endangered species.²⁶¹ A community's participation in the CRS program does not impact an action's practicability under part 9. Updating part 9 to incorporate the CRS program is inappropriate, as the CRS program provides discounts to individual policyholders in NFIP participating communities and as explained above, part 9 applies only to Federally-funded actions.

Further, FEMA's regulatory text is consistent with the Revised Guidelines. Wildlife habitat and connectivity are already incorporated into the rule in the definition of "natural and beneficial values of floodplains and wetlands." Specifically, that definition references "Living Resource Values" as "providing habitats and enhancing biodiversity for fish, wildlife, and plant resources." This language encompasses the wildlife habitat and connectivity requested by the commenter, and no edits are required to the final rule.

M. Other Comments

Comments: Two comments offered alternatives to the 8-step process outlined in part 9. One commenter recommended retreating a mile from every coast, river, and flood area and making those areas public lands, swamps, or flood zones and that FEMA prohibit rebuilding when buildings are destroyed due to sea level rise and convert those areas into their suggested publicly owned buffer. Another commenter recommended using eminent domain to reclaim flood damaged structures and reclaim lands, wetlands, swamps, and other properties, allowing these areas to naturally buffer and absorb flooding. The commenter stated private property rebuilding should not take place in a flood zone using taxpayer dollars, subsidies, grants, or any form of tax revenue.

FEMA Response: FEMA did not propose, and does not believe it would be appropriate to implement, a standard that categorically prohibits rebuilding within one mile of every coast, river, and flood area.

Comment: Another commenter stated there would likely be instances where the cost of floodproofing or elevating Federal and non-Federal buildings with the new FFRMS floodplain would be found to be unreasonable. The commenter recommended against any kind of automatic seizure or destruction in those instances, but rather suggested developing a process in which factors

²⁵⁹ See 24 CFR 55.12(c)(8)(i) and (ii) as of March 28, 2024.

²⁶⁰ 89 FR 30850 (Apr. 23, 2024).

²⁶¹ See CRS Coordinator's Field Manual 2017 and 2021 Addendum, available at <https://www.fema.gov/floodplain-management/community-rating-system> (last accessed Apr. 4, 2024).

could be considered in determining the future disposition of such buildings and encouraged the ability to grandfather-in some buildings so they could maintain their functionality until such a time as they actually suffered flood damage.

FEMA Response: Part 9 only applies to FEMA actions and the FFRMS only applies to FEMA actions that are subject to the FFRMS. FEMA defines “action subject to the FFRMS” as “any action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility.”

Where part 9 applies, FEMA has always incorporated natural environment, social concerns, and economic aspects into the 8-step process as part of the practicability analysis. Specifically, if the minimization measures for a proposed action were found to be “unreasonable,” that may fall under the economic aspect of the practicability analysis. In these instances, FEMA has not proposed automatic seizure or destruction procedures in the regulatory text or policy. FEMA also works with program applicants to consider the appropriate service life for the action during the 8-step decision-making process to better understand the flood risks and safety prioritization for individual actions.

Comment: A commenter asked if FFRMS would be used as a selection tool for grant projects. The commenter noted that FEMA has previously considered a project’s scope or service area for funding and stated the increase in floodplains from NOAA Atlas 14 revised flood maps would limit federal funding for some projects due to previous design criteria used on the downstream channels or development.

FEMA Response: FEMA will not use the FFRMS flood elevation as a selection tool for grant projects; rather, it is a design requirement for grant projects. Issues related to or impacting a project’s scope or service area remain unchanged. Finally, FEMA disagrees with the commenter’s statement that revised flood maps would limit federal funding for some projects. Revised flood maps where the floodplains increase would have no effect on project eligibility.

Comment: One commenter inquired whether the agency’s findings would be beneficial to the “central Arizona project” given the dangers of flooding to the canal.

FEMA Response: FEMA appreciates the commenter’s interest in this regulation. The FFRMS CISA State of the Science Report provides a review and update of the best-available, actionable science that can support

application of the Climate-Informed Science Approach (CISA).²⁶² FEMA respectfully refers the commenter to the State of the Science Report and other tools to determine whether the FFRMS policy initiative more broadly may have an impact on a local project of interest. FEMA’s part 9 controls the agency’s implementation of Executive Order 11988, as amended, and Executive Order 11990.

Comments: Some commenters requested FEMA consider implementing the FFRMS for the NFIP. Another commenter requested FEMA require disclosure of past flood damages for FEMA-funded residential projects.

FEMA Response: As explained above, FEMA cannot accommodate the commenter’s request to integrate the FFRMS into the minimum floodplain management standards for the NFIP because it is beyond the scope of this rulemaking. The NFIP is a program through which property owners in participating communities can purchase Federal flood insurance as a protection against flood losses. In exchange, a community must adopt and enforce floodplain management regulations that incorporate NFIP minimum floodplain management criteria developed by the Administrator. Further information regarding FEMA’s minimum floodplain management standards for the NFIP can be found at 44 CFR part 59 *et seq.* Any update to those standards would require a rulemaking to revise the appropriate regulatory sections of the CFR. By contrast, the FFRMS, as implemented by this rulemaking, only applies to actions where FEMA funds are used for new construction, substantial improvement, or repairs to address substantial damage to structures and facilities.

Requiring disclosure of past flood damage for FEMA-funded residential projects is beyond the scope of this rulemaking. However, FEMA notes disclosure of prior flood damage, flood claims or losses, and the status of repetitive loss properties is important, and FEMA is pursuing options to require such disclosure, as evidenced in FEMA’s 2023 legislative proposal submitted to the 118th Congress.²⁶³

²⁶² Available at https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed Jan. 24, 2024), <https://www.fema.gov/floodplain-management/intergovernmental/white-house-flood-resilience-interagency-working-group> (last accessed Jan. 24, 2024), and posted to the public docket for this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0007>.

²⁶³ See <https://www.fema.gov/flood-insurance/rules-legislation/congressional-reauthorization/legislative-proposals> (last accessed Jan. 24, 2024).

N. Accessibility

In the NPRM, FEMA requested specific comment on accessibility issues. FEMA sought public comments on the impact of the proposed elevation requirement on the accessibility of covered facilities under the Fair Housing Act, the Americans with Disabilities Act (ADA), the Architectural Barriers Act (ABA), and section 504 of the Rehabilitation Act of 1973. FEMA invited comments on strategies the agency could employ to ensure accessibility requirements were met for properties that would be impacted by the rule. Additionally, FEMA invited comments on the cost and benefits of such strategies, including data that supported the costs and benefits. FEMA received five comments on accessibility. Some commenters provided FEMA with recommendations on strategies regarding accessibility, while other expressed concerns with potential increased costs of accessibility and elevation along with potential conflicts regarding accessibility laws.

Comments: One commenter recommended FEMA consider accessibility concerns as a factor in favor of selecting alternatives that minimize residential and essential structures within the floodplain. The commenter also stated projects should be designed to maximize both access and resilience by practicing avoidance to the extent practicable, consistent with Executive Order 11988. Another commenter recommended FEMA issue design and regulatory guidance to address concerns or challenges over the effects of proposed elevations on accessibility of covered facilities, particularly those intended for use by disabled and elderly populations and stated guidance could ensure that floodproofing would not hinder accessibility. A third commenter noted that elevating structures was not always feasible, practical, or advisable and that seeking to meet both elevation and accessibility requirements created even more challenges and increased costs, sometimes rendering certain projects infeasible. Referencing HUD’s Fair Housing Act’s guidance on BFE challenges, the commenter recommended FEMA recognize the impracticability of requiring elevation in certain situations consistent with HUD’s guidance. The commenter cited increased cost concerns and unintended consequences on individuals who rely on accessible housing.

Some commenters stated FEMA’s request for comment on accessibility concerns indicated a conflict with implementation of the FFRMS and laws

governing accessibility. One commenter stated FEMA admitted the rule could potentially conflict with several acts aimed at protecting vulnerable populations such as the disabled and elderly. Another commenter stated the agency indicated the proposed rule threatened to violate the Fair Housing Act, the Americans with Disabilities Act, the Architectural Barriers Act, and section 504 of the Rehabilitation Act of 1973 and recommended FEMA identify and either exclude or limit these scenarios when applying the proposed standard.

FEMA Response: Through the final rule, FEMA seeks to prioritize minimizing the impact of floods on human health, safety, and welfare, including those of vulnerable populations. FEMA's request for comment in this area focused on ways the agency could further reduce or mitigate the impacts of the FFRMS implementation on these populations. Accessibility concerns would generally fall under social concerns and legal constraints in assessing practicability in the 8-step process. FEMA considers both the accessibility of a structure and the accessibility to community resources for those impacted. FEMA only takes action in the floodplain if there is no practicable alternative. Further, if an alternative would render a building inaccessible, it would not be a practicable alternative. FEMA agrees with one of the commenters that proper guidance can help reduce the impacts of elevation on accessibility. FEMA's existing guidance documents address concerns associated with the effects of elevation on accessibility. FEMA may address any additional specific concerns regarding FFRMS implementation as they arise on a case-by-case basis or via additional guidance.²⁶⁴

FEMA appreciates the importance of providing affordable, accessible housing. FEMA believes that the agency's policy approach provides flexibility to address these concerns. For example, construction of ADA-compliant access facilities or ramps is an eligible cost for FEMA's HMA structure elevation and mitigation reconstruction projects for homes. FEMA considered the costs and benefits associated with this rule, including the overall increased costs of FEMA

projects, in the regulatory impact analysis provided on the public docket for this rulemaking.²⁶⁵ FEMA believes that the benefits of preventing property damage and potentially saving lives justify the costs of the rule. These benefits are a result of the improved protection of structures and facilities due to increased elevation and floodproofing standards in FEMA's implementation of the FFRMS. This rule will help to ensure that Federal investments are better protected from flood damage, and that the natural values of floodplains are preserved. FEMA notes any increased costs are generally eligible for funding under FEMA's assistance programs subject to cost share requirements, including accessibility needs.

Regarding other conflicting laws, the commenters do not accurately state FEMA's position. FEMA sought comment on how the implementation of FFRMS may interact with specific legislation and strategies FEMA could employ to ensure accessibility needs were met. FEMA's policy approach provides flexibility to accommodate the specific needs of the vulnerable populations the commenter references, and FEMA believes the 8-step process requirements, specifically in considering the practicability of an action and potential impacts from the action, detailed above help resolve accessibility concerns.

O. Regulatory Impact Analysis Comments

FEMA received several comments specific to the agency's RIA associated with the rulemaking.

1. Alternatives

Comment: Commenters requested additional clarification and recommended edits to the alternatives detailed in the RIA. Specifically, two commenters stated FEMA should consider alternatives to the proposed standard and the various FFRMS approaches. The commenters stated that analyzing alternatives would include identifying cases where imposing the standard would create new risks and costs greater than the risk the standard sought to mitigate. The commenters further requested FEMA delay the final rule until these analyses were completed.

FEMA Response: Executive Order 11988, as amended, directs agencies to perform or fund actions within or affecting floodplains only if those

actions are the only practicable alternative. Through the 8-step process for individual actions, FEMA considers alternative locations, alternative actions, nature-based solutions, and the no action alternative under the practicability analysis. If there is no practicable alternative, FEMA will perform or fund the action and will minimize any adverse impacts when doing so.

On a project basis, FEMA has consistently leveraged benefit-cost analysis in grant programs requiring evaluation of cost effectiveness, such as those programs under Hazard Mitigation Assistance, and will continue to do so along with minimum standards for floodplain management across the agency's programs to help ensure that Federally funded projects are both cost-effective and result in more resilient communities. Additionally, during the 8-step process, FEMA will also evaluate the impacts from the proposed action (in Step 4) when determining the appropriate resilience or minimization measures in Step 5. The flexibility of the 8-step process allows FEMA to work with SLTTs to select the appropriate minimization measure for the action. FEMA requires that only practicable means to minimize harm to or within the floodplain are required for compliance with 44 CFR 9.11, including consideration of economic aspects. If, in the course of implementation, FEMA identifies categories of projects for which the standard proves to be generally impracticable, FEMA may take appropriate action—such as issuing further guidance—at that time.

FEMA believes that the benefits of preventing property damage and potentially saving lives justify the costs of the rule. These benefits are a result of the improved protection of structures and facilities due to increased elevation and floodproofing standards in FEMA's implementation of the FFRMS. This rule will help to ensure that Federal investments are better protected from flood damage, and that the natural values of floodplains are preserved.

Comment: A commenter stated the RIA did not present information on the population at risk, or the residual risk to human life associated with each FFRMS approach. The commenter stated that FEMA should follow the requirements of the Principles and Requirements for Federal Investments in Water Resources (March 2013) and accompanying Interagency Guidelines²⁶⁶ to provide information to

²⁶⁴ See e.g. "Hazard Mitigation Assistance Guidance," pgs. 59–60 available at https://www.fema.gov/sites/default/files/documents/fema_hma_guide_08232023_v1.pdf (last accessed April 2, 2024), "Public Assistance Program and Policy Guide, pg. 151 available at https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf (last accessed Mar. 12, 2024).

²⁶⁵ See <https://www.regulations.gov/document/FEMA-2023-0026-0013>. Specifically, see section 7.11.5 "Elevation Requirement Impacts on THUs."

²⁶⁶ Available at https://obamawhitehouse.archives.gov/sites/default/files/final_principles_and_requirements_march_2013.pdf (last accessed

owners and residents of flood-prone property the residual flood risk and availability of flood insurance. The commenter recommended that FEMA provide an estimate of the population at risk by FFRMS approach and an estimate as to how this would change by approach.

The commenter also requested information on FEMA's statements in the RIA regarding potential for lives saved by the rulemaking. The commenter stated that FEMA provided statistics on the number of fatalities from flash and river flooding but was unable to estimate how many of those fatalities would be avoided if the rulemaking were implemented. The commenter also stated that FEMA did not provide a quantification that would allow for a comparison among the FFRMS approaches. The commenter wrote that FEMA did not clarify whether the CISA would be safer than the FVA or 0.2PFA or whether elevating and floodproofing properties were necessarily safer than the no action alternative. The commenter further stated that floodproofing and elevation could instill a false sense of security that encouraged people to not evacuate or delay their departure in a flood. The commenter recommended that FEMA provide additional information in the RIA on this topic and include non-quantified costs to acknowledge it was conceivable that elevation and floodproofing could result in an increase in lives lost if those efforts provide a false sense of safety to the public.

FEMA Response: FEMA is leveraging Executive Order 11988, as amended, and the Revised Guidelines for the FFRMS rulemaking and the FFRMS implementation. The Principles and Requirements for Federal Investments in Water Resources and the accompanying Interagency Guidelines (PR&G) do not generally apply to this rulemaking; rather, those requirements apply to actions associated with water development projects.²⁶⁷ FEMA will

Jan. 24, 2024) and https://obamawhitehouse.archives.gov/sites/default/files/docs/prg_interagency_guidelines_12_2014.pdf (last accessed Jan. 24, 2024).

²⁶⁷ See "Principles and Requirements for Federal Investments in Water Resources at pg. 1, (Mar. 2013) available at https://obamawhitehouse.archives.gov/sites/default/files/final_principles_and_requirements_march_2013.pdf (last accessed Apr. 29, 2024) ("It is intended that these Principles and the supporting Requirements and Guidelines be applied to a broad range of Federal investments that by purposes, either directly or indirectly, affect water quality or water quantity"); see also and "Interagency Guidelines," available at https://obamawhitehouse.archives.gov/sites/default/files/docs/prg_interagency_guidelines_12_2014.pdf (last accessed Apr. 29, 2024).

apply the PR&G requirements to those specific actions as applicable, namely those actions where FEMA is taking an action associated with a water development project. Although the PR&G does not generally apply to this rulemaking, FEMA notes that the 8-step process includes public notice requirements detailed for steps 2 and 7, as further detailed in part 9.

Regarding the commenter's comment about how FEMA did not provide a quantification that would allow for a comparison among the FFRMS approaches, FEMA showed the comparison in Tables ES-12 and ES-13 within the RIA. These tables present the cost, transfer payments, and benefit estimates by FFRMS approach—where available data allow—and also present estimates of costs, transfers, and benefits by grant program for CISA, FEMA's primary approach.

FEMA added more text to the qualitative analysis within the benefits section of the RIA accompanying this final rule to further address the commenter's concerns regarding risk to human life and whether elevating or floodproofing properties under any of the FFRMS approaches is safer than taking no action. FEMA included a description of qualitative benefits, which included the potential for lives saved, savings in time and money from a reduced recovery period after a flood, increased safety of individuals, increased public safety, reduced personal and community impacts, and reduction in future health issues related to flooding. FEMA does not believe that it would be appropriate to refrain from taking this action based on the commenter's suggestion that the rule could instill a false sense of security. The commenter provided no evidence on this point, and FEMA does not believe it would be appropriate to fund less resilient projects in an effort to avoid making people feel secure in the event of a flood.

As explained in the NPRM, the CISA is FEMA's preferred policy approach, as FEMA believes it has the potential to be the best and most well-informed approach to building resilience in an equitable manner and ensuring a reduction in disaster suffering. CISA is designed to meet current and future estimates of flood risks unique to the location and thus provide the best overall resilience, cost effectiveness, and equity.

With regard to the commenter's recommendation that FEMA provide an estimate of the population at risk by FFRMS approach, FEMA cannot correlate population risk by floodplain expansion. FEMA could not use

Geographical Information System (GIS) data, as the database identifies whether a project was in the floodplain, but because it did not categorize projects according to their location, FEMA was not able to distinguish projects located in coastal areas from those located in non-coastal areas. Additionally, the dataset does not break out multiple project worksites.

FEMA notes the agency's current alternatives analysis process incorporates consideration of a range of flood mitigation practices. FEMA considers the following alternatives: (a) no action; (b) alternative locations; and (c) alternative actions, including alternative actions that use natural features or nature-based solutions. When practicable, FEMA avoids actions within the floodplain. The flood minimization measures found in § 9.11 are reliable methods of providing resilience to structures. FFRMS flood resilience measures consider both current and future flood risks to better protect Federal investments. The elevation requirement in § 9.11(d)(3) applies to structures and also allows floodproofing for non-residential structures. The FFRMS policy provides further explanation for structures that must be located within the FFRMS floodplain must be elevated or floodproofed to the FFRMS flood elevation. Additionally, the policy clarifies facilities can use elevation or any other appropriate minimization measure to protect the facility against the FFRMS flood elevation. Minimization can include measures such as ensuring the impacted public knows their flood risk and has awareness of flood evacuation procedures.

2. Discount Rates

Comment: Two commenters requested FEMA implement the revised 2 percent discount rate from OMB Circular A-4 for this rulemaking to represent future benefits more accurately. Another commenter requested clarification on the discount rates used in the RIA. That commenter recommended FEMA state that the analysis was conducted using the prescribed 7 percent discount rate and requested FEMA provide a sensitivity analysis using a 3 percent discount rate and a 10 percent discount rate if appropriate.

FEMA Response: The new OMB Circular A-4 discount rate is effective March 1, 2024, for regulatory analyses received by OMB in support of proposed rules, interim final rules, and direct final rules, and January 1, 2025, for regulatory analyses received by OMB in support of other final rules. The

FFRMS proposed rule was published on October 2, 2023. Given this timing, FEMA is using the previously established discount rate and is not applying the new OMB Circular A-4 discount rate to this final rule. For the RIA, FEMA provided discounted values using both 3 percent (social rate of time preference) and 7 percent (opportunity cost of capital) based on the version of OMB Circular A-4 that was in place at the time of publication of the NPRM.

Comment: A commenter requested several clarifications on the discount rates that were used within the RIA, including the discount rate used to generate the figures in Appendix E (Benefits). The commenter questioned why both the 3 and 7 percent discount rate for benefits were used within the analysis when the 50-year present value benefit uses a single 7 percent discount rate. And they sought clarification on how the 7 percent discount rate was used for benefits.

FEMA Response: FEMA utilizes a 7 percent discount rate for benefits, while the table(s) referenced uses both 3 and 7 percent discount rates. The benefits per structure consist of a 50-year stream of benefits, discounted to the year that the structure is constructed using a 7 percent discount rate. Since the RIA estimates 10 years' worth of projects, those benefits must be discounted again from the year of construction to the present (*i.e.*, to the beginning of Year 1) and annualized for comparison with 10 years' worth of costs. FEMA conducted its discounting from the year of construction to the beginning of Year 1 and conducted its annualization using both 3 and 7 percent discount rates, per the version of OMB Circular A-4 that was in effect at the time of publication.²⁶⁸ FEMA has clarified this in this RIA.

3. Costs

Comment: A commenter requested clarifications and provided recommendations regarding administrative costs in the RIA. Specifically, the commenter asked for clarification on the administrative costs in tables 85 and 86 of the RIA, which summarize the low and high estimated impacts of the rule, stating these costs were shown as being the same for all of the alternatives in those tables while the RIA stated a range for the administrative costs. The commenter also requested clarification on table ES-12 and other tables that omitted administrative costs

from the undiscounted total dollar figures while those costs were included in the undiscounted costs in tables 64-69 which show total costs by FFRMS approach. The commenter requested FEMA reconcile the issue. The commenter stated FEMA acknowledged there would be annual administrative costs but only included those costs in the economic analysis for the first 10 years of the period of the analysis. The commenter recommended FEMA either include annual administrative costs as they apply after the initial 10-year period or explain why they would no longer be included.

FEMA Response: The administrative costs are different in tables 85 and 86 in the RIA provided with the NPRM. FEMA created a range for estimating the administrative costs for two circumstances: (1) if all projects used the interagency Federal flood standard support tool (low estimate, as represented in Table 85) and (2) if all projects used the Job Aid (high estimate, as represented in Table 86) for the first 10 years under the CISA. In reality, the administrative costs will likely fall somewhere between the low and high estimates. These tables are still tables 85 and 86 in the RIA. Further, tables 64-69 show the costs of the three different approaches (CISA, FVA, and 0.2PFA), which include the administrative costs to show the total cost under each approach.

Table ES-12 is a summary table that shows the costs of each approach so that the reader can see the various options next to each other. The administrative cost is separated out because if FEMA added the administrative cost to each approach, it may be misinterpreted as triple counting. To address the commenter's concerns, FEMA included footnotes in Table ES-12 and Table ES-13. FEMA also removed the term "total" from the costs section within Table ES-12 and Table ES-13 as they are not the total cost as they do not include the administrative cost. The reader should add each individual approach to the FEMA administrative cost to obtain the total costs in Section 7.12. For example, CISA + FEMA administrative = total CISA cost.

FEMA examined the number of projects that will be subject to the requirements in the first 10 years after the rule's publication. FEMA's analysis focuses on the costs, benefits, and transfer payments (*i.e.*, impacts on FEMA grants) that will result over a 50-year period from the application of the requirements of the final rule to those projects, for a total period of analysis spanning 60 years. The costs and transfers occur in the first 10 years of

the 60-year period because that is when the initial investment to elevate or floodproof those projects takes place. This is an upfront cost that occurs when the project is constructed. However, the benefits of the final rule are estimated over the 50-year useful life of the affected structures.

Comment: A commenter recommended FEMA use a more general cost index such as the Gross Domestic Product-Implicit Price Deflator (GDP-IPD) or an appropriate construction cost index instead of the U.S. Department of Labor's Bureau of Labor Statistics Consumer Price Index (CPI) to establish a 2021 common dollar basis.

FEMA Response: FEMA used CPI in majority of the analysis within the RIA, such as to adjust historical grant obligation amounts to constant dollars. However, FEMA used an Engineering News Record (ENR) Construction Costs²⁶⁹ factor to adjust the construction values to 2021 costs within the NPRM RIA. The ENR was used to represent the change in costs from 2016 to 2021. The value selected was a national cost average. This value is consistent with the approach used to calculate the initial construction costs, which applied the national average square foot cost. The adjustment factor from 2016 to 2021 applied was 1.17 or a 17% increase in construction costs over the period analyzed. FEMA used the same ENR data for the final rule's RIA but adjusted it to 2022 costs. While other sources indicated a larger range of construction cost increase, the ENR value was selected in the 2022 report as a lower-bound approach to the benefits analysis.

Comment: A commenter stated that FEMA acknowledged the costs of operating and maintaining elevation and floodproofing projects were not included in the RIA but instead were zeroed out. The commenter stated that while additional costs for operating and maintaining an elevated structure would be low, the costs for floodproofed structures could be substantial if floodproofing entailed generator/pumping stations. The commenter stated the omission was particularly glaring given the 50-year design life of the project and recommended FEMA include some reasonable estimate of these costs rather than zeroing them out, though the commenter did not provide any such estimates. The commenter also stated the RIA was incomplete without information on the estimated costs of

²⁶⁸ OMB Circular A-4, Regulatory Analysis, September 17, 2003, pages 33-34. Available at: <https://www.reginfo.gov/public/jsp/Utilities/a-4.pdf> (last accessed Apr. 29, 2024).

²⁶⁹ Construction Cost Index History. Engineering News Record (ENR). Available at: https://www.enr.com/economics/historical_indices/construction_cost_index_history (last accessed: Mar. 18, 2024).

improving the flood resilience of facilities; however, the commenter did not provide a data source to use for estimating the cost of increased flood resilience for facilities.

FEMA Response: FEMA appreciates the commenter's concerns. FEMA requested available data that would assist FEMA in estimating the impact of the proposed increased flood resilience standards on specific types of facilities, including examples showing the cost of similar resilience measures, case studies, or other relevant information. FEMA did not receive any data. Instead, FEMA discusses the non-quantifiable costs within Qualitative Discussion of Additional Potential Costs section. FEMA was able to quantify the number of facilities that would be impacted by the rule as well as the incremental costs of applying the FFRMS to these facilities. FEMA conducted the analysis on facilities based on the best available information. FEMA acknowledges that there are lifecycle costs associated with floodproofing of structures, but these costs are unique to the type of structure and floodproofing methods used, and not generalizable across all potential projects nationwide. FEMA discusses these costs qualitatively in Section 7.11.3 of the RIA.

FEMA included a qualitative summary of the impacts that could not be quantified, such as increased resilience standards for facility projects, additional costs for adding requirements to buildings with basements, diversion of projects out of the floodplain, lifecycle maintenance costs for floodproofing and project delays and forgone projects, within the executive summary and conclusion section.

FEMA discusses facilities and the challenges with estimating economic impacts of the FFRMS. Because there are many methods for making facilities resilient, and due to the wide variety of projects considered facilities, FEMA could not make quantitative estimates of economic impacts for these projects that can be applied for all facility types nationwide.

Comment: A commenter requested FEMA further explain the omission of specific quantifiable costs, such as the costs for projects that may be diverted out of the floodplain, impacts to projects with existing basements, project delays, or foregone projects, that would result from the rule. The commenter stated these costs vary in terms of data and method calculation ability. In particular, the commenter questioned why impacts to structures with basements were not quantified because data are available about, for instance, the prevalence of basements geographically and depth-

damage functions for structures with basements, as well as information from the Census of Construction. The commenter also questioned whether diversion out of the floodplain is a cost of the rule because, presumably, a project would only be diverted if a project owner determined that net benefits would be higher without the project in the floodplain.

FEMA Response: FEMA identified these as data limitations because the agency does not generally track the information referenced by the commenter. For example, FEMA does not track project applications where the applicant withdraws their application for Federal funding due to floodplain considerations.

In addition, FEMA appreciates the commenter providing data sources for structures with basements and has considered this data. These data sources provide national-level summary statistics and geographic information on structures with basements. FEMA is unable to apply this data to FEMA's project level data, since FEMA databases do not include fields for structures with basements, and FEMA is unable to correlate the Census of Construction data with its own project-level data. Additionally, this data pertains to residential construction, and only a small number of FEMA actions subject to the FFRMS are residential construction.

4. Benefits

Comment: A commenter requested clarification on the discrepancy on "Appendix E: Benefits Net Present Value" heading on page 213, which would appear to indicate that Tables 1–18 display the Net Present Values, but the column headings in these tables are labeled ". . . Present Value Benefits. . . ." The commenter stated that the various values presented in said tables are elsewhere presented as Benefits rather than Net Benefit, as seen in a comparison of Table 84 with Tables 17 and 18 of Appendix E.

FEMA Response: The tables referenced by the commenter show the Present Value of the benefit streams expected from implementation of this rule. FEMA updated the table headings and footnotes as appropriate.

Comment: A commenter requested clarification on how the results of the analysis were presented in tables. Specifically, the commenter questioned the presentation of a single estimate for benefits the FFRMS approaches in the conclusion, the lack of monetization for benefits discussed qualitatively, how none of the FFRMS approaches have a positive net benefit, and how there was

no rationale for not selecting 0.2PFA as the preferred approach, as the commenter calculates it is the FFRMS approach with the greatest net benefit.

FEMA response: The benefits are not the same for all of the FFRMS approaches. FEMA could not quantify every cost and benefit associated with this rule. However, FEMA was able to quantify the number of structures and facilities that would be impacted. FEMA quantified a portion of the benefits for the CISA for all PA Category E projects that are subject to the FFRMS. Specifically, FEMA estimates the present value benefits of one additional foot of freeboard for the 50-year useful life of PA Category E projects undertaken during the 10-year period of analysis, with the assumption that there will be a 59-inch SLR.

FEMA was only able to estimate quantitative benefits for PA Category E projects affected using CISA. FEMA cannot compare quantitative benefits to the costs for IA or HMA, since FEMA does not have a reliable data source to estimate the benefits for projects covered by these programs; HMA data cannot be broken out by building types and IA data is limited to residential-related projects, which are not included in the 2022 report. The table that the commenter created making such a comparison to demonstrate that 0.2PFA is the FFRMS approach has the highest net benefits is not accurate. The present value of benefits using CISA is not the same as the present value of benefits using FVA or 0.2PFA, as the number of projects impacted by each approach varies. FEMA did estimate the impact on PA projects for FVA, 0.2PFA and CISA in sections 7.14.2.1 through 7.14.2.6 within the RIA. However, these estimates cannot be applied to IA and HMA projects for the reasons stated above. In addition, there are additional costs and benefits that FEMA could not quantify for this analysis so FEMA discussed them in a qualitative manner. For example, qualitative benefits include the potential for lives saved, savings in time and money from a reduced recovery period after a flood, increased safety of individuals, increased public safety, reduced personal and community impacts, and reduction in future health issues related to flooding.

Accordingly, FEMA is unable to use the commenter's table to select the "alternative with the greatest net benefits" as the commenter stated, since the table is not inclusive of all of the rule's quantified and unquantified benefits.

Comment: A commenter sought clarification about how FEMA

compared the costs and benefits within the RIA. The commenter stated that it appeared as if the costs pertaining to “14,427 PA, IA, and HMA structures” are being associated with, or charged to, the benefits associated with “1,173 PA Category E projects.”

The commenter also expressed confusion over how FEMA used +5-ft freeboard for costs and then used +1-ft freeboard for benefits. The commenter asserted that the statement “FEMA does not have data to quantify the benefits of additional freeboard” was confusing because depth-damage functions are available. They presumed that this would account for CISA’s poor economic performance relative to the other approaches.

FEMA Response: FEMA’s quantitative benefit estimates are based on a 2022 report that analyzed the benefits of 1 foot of additional freeboard for various building types. FEMA used this report to quantify the benefits of 1 foot of freeboard, as this was the only data that was available. This allowed FEMA to monetize the benefits of an additional foot of freeboard for non-residential PA projects (*i.e.*, Category E projects). FEMA was unable to use the benefits study to estimate the benefits for HMA and IA projects, since HMA data cannot be broken out by building type, and IA data is limited to residential projects. Accordingly, FEMA’s analysis acknowledges that when comparing the total monetized costs and benefits of the rule, it is an imperfect comparison: the total monetized costs are attributable to elevating or floodproofing PA, IA, and HMA structures between 1 and 5 feet (depending on the FFRMS approach used and the location of the project), while the total monetized benefits are attributable to elevating or floodproofing PA projects one additional foot.

FEMA does not claim that the benefits to PA Category E projects are associated with, or charged to, any of the other projects in this analysis. FEMA was able to estimate costs for PA, HMA, and IA, but only able to quantify benefits for PA Category E. FEMA expects benefits for all types of projects but does not have sufficient data for a quantitative estimate.

FEMA could not apply depth-damage functions to these projects, since they are only applicable to elevation or floodproofing at specified levels above the base flood elevation for specified flood zones. FEMA’s project databases only identify whether a project is in the 1 percent annual chance floodplain and do not show what flood zone a project is located in. Because of this, FEMA cannot apply depth-damage functions to

individual projects to determine the benefits from elevation or floodproofing.

FEMA supplements the monetized benefits with a qualitative discussion of additional benefits that FEMA could not monetize. Specifically, FEMA identified qualitative benefits, including reductions in damage to properties and contents from future floods, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding.

Comment: A commenter requested clarification about how FEMA would determine the necessary height to maximize net benefits for a given project under CISA. Specifically, the commenter asked what assumptions FEMA would use (*e.g.*, a 59-inch SLR, an 8.5 RCP) to determine elevations that result from “using the best-available, actionable hydrologic and hydraulic data and methods.”

FEMA Response: In the RIA, FEMA provided a summary of the estimated benefits per building type for PA projects. The analysis included both mitigation types (elevation and floodproofing) for 8-inch, 39-inch, and 59-inch SLR and both mitigation types for 4.5 and 8.5 RCP. For FEMA’s primary estimate, FEMA used 59 inches of SLR due to it being the closest SLR option to the vertical rise, in accordance with FEMA’s CISA+5-ft assumption. CISA is the preferred approach for the FFRMS if the data are available. Since 5 feet is equivalent to 60 inches (5 × 12 inches per foot), 59-inch SLR is the closest SLR option that FEMA had available for this portion of the analysis.

However, in practice, FEMA’s FFRMS policy sets minimum elevation requirements to account for possible changes in future flood hazards and therefore, under the CISA, the elevation or floodproofing height would vary by location and criticality of the project. As explained above, FEMA is relying on the FFRMS CISA State of the Science Report to determine what CISA data is actionable and available and will use the FFRMS Job Aid methodology to determine the CISA, FVA, and 0.2PFA for FFRMS actions. The FFRMS CISA State of the Science Report²⁷⁰ discusses

²⁷⁰ FFRMS CISA State of the Science Report, pg. 22, available at https://www.whitehouse.gov/wp-content/uploads/2023/03/Federal-Flood-Risk-Management-Standard-Climate-Informed-Science-Approach-CISA-State-of-the-Science-Report.pdf?trk=public_post_comment-text (last accessed April 4, 2024). The report recommends that agencies use the latest interagency Federal guidance for regionally-based SLR projections. The underlying SLR science reported used for the report is based on the IPCC AR6 which uses shared socioeconomic pathways (SSPs) rather than the older Representative Concentration Pathways

the SLR scenarios and what factors to consider when selecting the appropriate SLR projection. The FFRMS Job Aid recommends using the intermediate SLR scenarios for non-critical actions and intermediate-high SLR scenarios for critical actions.²⁷¹ As part of initial implementation, FEMA intends to leverage the FFRMS Job Aid as explained above.

Comment: A commenter requested clarification regarding a footnote in the RIA’s Executive Summary, in which FEMA explains the scope of its analysis is limited to impacts from affected projects in the initial 10 years. The commenter questioned the validity of the analysis under the assumption that the analysis relied on a sample of a larger set and recommended that FEMA coordinate with water resource agencies for additional data on elevation and floodproofing.

FEMA Response: This commenter is misinterpreting the footnote. The footnote is explaining why FEMA has limited the analysis to impacts from projects in only the initial 10 years of the rule’s implementation. It is not saying that the cost analysis is relying on a sample (the first ten years of implementation) of a larger set (the period of time in which the regulation would be in effect) as suggested.

Comment: One commenter wrote that the rule increased the efficiency and financial benefits of Federal investments and that it would be irresponsible to continue spending taxpayer dollars based on a backwards-looking assessment of flood risk. The commenter agreed with FEMA’s assessment that the benefits of the rule justified the rule’s costs. The commenter requested FEMA provide a more comprehensive and accurate accounting of benefits in the RIA and quantify and monetize a wider range of benefits, although the commenter did not provide any specific suggestions for doing so. The commenter noted that many of the RIA’s unquantified benefits were of profound importance to communities and families residing in the floodplain, including lives saved, access to evacuation routes and essential services, better long-term health outcomes, and reduced recovery times. Additionally, the commenter recommended FEMA

(RCPs). The five SLR scenarios described in Sweet et al. (2022), page 10, are based on global mean sea level (GMSL) target values at 2100. These sea level scenarios are related to but distinct from the emissions pathway scenarios in the IPCC AR6. The intermediate SLR scenario corresponds to a GMSL target value in 2100 of 1m and the intermediate-high SLR scenario corresponds to GMSL target value in 2100 of 1.5M.

²⁷¹ FFRMS Job Aid, pg. 21.

place greater emphasis on describing, quantifying, and monetizing the benefits of conserving floodplains and wetlands and encouraging nature-based solutions. Finally, the commenter suggested FEMA consider a more nuanced approach to the final rule's distributional effects by assessing how the rule's benefits might be distributed across populations.

FEMA Response: While monetizing the reduction in damages that is anticipated from the rule would be a useful way to show the rule's benefits, not all of the benefits can be effectively monetized with available data. FEMA thoroughly researched methods to quantify and monetize as many benefits as possible for the proposed rule but did not find adequate sources to reliably quantify or monetize most benefits. FEMA continues to research methods and data for quantifying benefits, but since publication of the proposed rule, has not found data sources that would enable FEMA to further quantify the benefits of incremental amounts of freeboard. In addition, FEMA did not receive any data or methods from commenters that would allow FEMA to quantify what it found to be unquantifiable impacts. Accordingly, consistent with direction by OMB Circular A-4 for costs and benefits that are difficult to quantify, FEMA provided a literature review of relevant benefits that could be realized from flood mitigation, an analysis of benefits quantified for the rule, a qualitative description of additional benefits that could be realized from the rule, and a discussion of why FEMA was unable to quantify such benefits.

Regarding the commenter's recommendation to assess how the rule's benefits might be distributed across populations, FEMA agrees that ensuring equal access to FEMA funding for PA, IA, and HMA projects is important. The projects affected by this rule will be a subset of—only new construction or substantial improvement—projects currently funded through these programs. Accordingly, current FEMA initiatives address these concerns. For example, FEMA has an agency-wide initiative focused on reducing barriers and increasing opportunities so all people, including those from vulnerable and underserved communities, can get help when they need it. Additionally, FEMA reviews all proposed FEMA-funded actions for potential disproportionate and adverse human health and environmental effects on communities with environmental justice concerns using a standardized environmental justice compliance review process.

5. Benefit Cost Analysis (BCA)

Comment: A commenter sought clarification of the term “cost-effective” within the RIA.

FEMA Response: FEMA added the definition of cost-effectiveness used within the RIA as “any alternative or measure whose discounted benefits are greater than its discounted costs” within the RIA to clarify this. FEMA acknowledges that it is possible to define cost-effectiveness as ensuring the most efficient use of a given amount of resources, but notes that the definition in the RIA is consistent with BCA principles applicable to some FEMA grant programs.

Comment: A commenter stated that the gross omissions in the “BCA” render it useless, if not misleading as a BCA. The commenter referenced guidelines at both 40 CFR 1502.22 and Chapter III of Principles, Requirements and Guidelines for Water and Land Related Resources Implementation Studies (PR&G). The commenter did not provide data that would allow FEMA to fill the stated “omissions.”

FEMA Response: The commenter appears to be using the term “BCA” to refer generally to FEMA's regulatory impact analysis pursuant to E.O. 12866 and comparing the analysis to NEPA guidelines and PR&G. To the extent the commenter is referring generally to FEMA's regulatory impact analysis, FEMA recognizes that it has limitations based on available data, and provided qualitative analysis where it could not complete a quantitative analysis. OMB Circular A-4—the operating guidance for regulatory analysis conducted pursuant to E.O. 12866—acknowledges that it may not be possible to express in monetary units all of the important benefits and costs.²⁷² Circular A-4 directs that if monetization is not possible, agencies should explain why and present all available quantitative information, and if agencies are not able to quantify the effects they should also present a description—along with strengths and limitations—of the unquantified effects.

FEMA adhered to this guidance. Although FEMA could not estimate the cost of the rule for facilities due to the highly project-specific nature of facilities projects, and the numerous options for making them resilient, FEMA was able to quantify the number of impacted facilities and explained why monetization was not possible. FEMA was unable to estimate the

number of projects that would use each FFRMS approach per FEMA's policy, and so FEMA conducted an analysis assuming each FFRMS approach was the only one to demonstrate the range of possible costs. For benefits, FEMA acknowledged that the quantified estimates—where data allowed for quantification—represent only a portion of the increased risk reduction that will be achieved through this rule and discussed qualitatively other important benefits of the rule. When considering the total costs of the rule, FEMA noted that its choice of CISA as its preferred approach will use the best available and actionable scientific data to tailor future flooding risk to each project, ensuring that projects are built only to the elevation necessary and thus maximizing net benefits.

Comment: A commenter stated that the RIA did not comply with Circular A-4's requirements to present the net benefits for the different alternatives and provide a threshold or incremental analysis supporting the selection of FEMA's preferred alternative.

FEMA Response: As discussed above, Circular A-4 acknowledges that it may not be possible to express in monetary units all of the important benefits and costs. It notes that when important benefits and costs cannot be expressed in monetary terms, the calculation of net benefits is less useful, and “can even be misleading,” because in such cases, the calculation of net benefits do not provide a full evaluation of all of the relevant benefits and costs. Instead, Circular A-4 advises that in such circumstances agencies should exercise “professional judgment” in determining how important the non-quantified benefits and costs may be in the context of the overall analysis.²⁷³

As the commenter points out, Circular A-4 acknowledges that agencies “should also consider conducting a threshold analysis to understand the potential significance of these factors to the overall analysis.” FEMA considered including a threshold analysis, but such an analysis still would not have provided insight into the difference between the benefits of CISA, FVA, and 0.2PFA as data available to estimate quantitative benefits was limited to only one foot of freeboard for PA structure projects. The difference in unquantified impacts between the FFRMS approaches would result in comparison of thresholds comprising different sets of impacts. Accordingly, FEMA used its

²⁷² OMB Circular A-4, Regulatory Analysis, September 17, 2003, pages 33–34. Available at: <https://www.reginfo.gov/public/jsp/Utilities/a-4.pdf> (last accessed Apr. 29, 2024).

²⁷³ OMB Circular A-4, Regulatory Analysis, September 17, 2003, page 10. Available at: <https://www.reginfo.gov/public/jsp/Utilities/a-4.pdf> (last accessed Apr. 29, 2024).

professional judgment to determine that CISA is the best policy decision because it is meant to ensure that amount of additional flood protection for each project is determined by the best available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science.

Comment: A commenter stated that the FFRMS RIA does not comply with the requirements for a Cost-Effectiveness Analysis (CEA) as detailed in OMB Circular A-4.

FEMA Response: FEMA recognizes it has limitations in the available data and agrees the RIA was not intended to be a CEA, as defined by OMB Circular A-4. FEMA notes that OMB Circular A-4 provides agencies with a choice of analytical approaches for regulatory analysis and does not require agencies to perform a CEA.²⁷⁴ As mentioned above, FEMA provided qualitative analysis where it could not complete a quantitative analysis, as allowable under OMB Circular A-4. FEMA was unable to conduct a CEA because FEMA only had data available to estimate quantitative benefits of only 1 foot of freeboard for structures under the PA program. FEMA did not have data available to conduct the same quantitative analysis for projects under the IA and HMA grant programs or for additional levels of freeboard as applicable under each of the FFRMS approaches. Therefore, FEMA completed a Benefit Cost Analysis as it is more appropriate for this rulemaking given the wide range of unquantifiable benefits expected to accrue from each alternative.

6. Other RIA Comments

Comment: FEMA requested public comment on any available data, examples showing the costs of similar resilience measures, case studies, or other relevant information that would assist FEMA in estimating the magnitude of the impact of the FFRMS on specific types of facilities. A commenter recommended contacting the “four water resource agencies” identified as “USACE, BuRec, DOE-TVA, and NRCS,” to what information in their current databases or relevant studies might be useful.

FEMA Response: FEMA appreciates this suggestion. FEMA has engaged with the U.S. Army Corps of Engineers (USACE), the Bureau of Reclamation (BuRec), the Tennessee Valley Authority

(TVA),²⁷⁵ and the National Resources Conservation Service (NRCS), and none of the agencies had relevant data or studies in relation to facilities that FEMA could use for this economic analysis. While such agencies—like FEMA—have access to some information on making facilities more resilient to flooding,²⁷⁶ it is still not possible to use this information to generate estimates of the likely marginal cost of FFRMS implementation across FEMA-funded facility projects. The variety of projects, and unique characteristics of construction and repair of these projects does not allow FEMA to make estimates that can be broadly applied.

Comment: A commenter stated that the RIA is subject to the Principles and Requirements for Federal Investments in Water Resources March 2013. The commenter stated the RIA was inconsistent with the requirements of that document and supporting PR&G. Specifically, the commenter stated the RIA did not make any representation as to any alternatives that maximize public benefits relative to costs and failed to provide any representation of net public benefits. The commenter also stated the preferred alternative was not clearly defined and the commenter recommended FEMA disclose assumptions made and address uncertainties associated with the composition of the preferred alternatives consistent with the PR&G.

FEMA Response: As explained above, the PR&G does not generally apply to this rulemaking; rather, the PR&G applies to actions associated with water development projects. FEMA will apply the PR&G only to those specific actions under part 9 that are actions associated with a water development project.

Comment: One commenter noted that the baseline against which FEMA assessed the costs and benefits of this rule produced a “subjective assessment of the proposed rule’s costs and

benefits.” Specifically, the commenter stated that because FEMA said it was unable to conduct an analysis of the rule’s effects separate from the effects of FEMA’s recently implemented partial interim policies for Public Assistance (PA) and Hazard Mitigation Assistance (HMA) that the pre-guidance baseline it used was a “less-representative” analysis of the rule’s costs and benefits.

FEMA Response: FEMA conducted its analysis under the pre-guidance baseline that considered the holistic effects of the partial interim policies for PA and HMA, as well as the proposed rule. At the time the Notice of Proposed Rulemaking (NPRM) RIA was conducted, these partial implementation policies had been in place for less than 2 years, which is an insufficient period to provide adequate data for analysis. These policies were issued as temporary, partial implementation of the FFRMS until FEMA could implement it through this rulemaking. FEMA conducted the Regulatory Impact Analysis against a pre-statutory baseline to capture the economic impacts of the FFRMS and more accurately measure the impacts of the rule against the world without the interim PA and HMA policies. Therefore, FEMA was unable to complete an in-depth analysis of the impact of these interim policies. Accordingly, FEMA used a pre-guidance baseline for this final rule to measure the impacts of the rule against the world without the interim PA and HMA policies.

Comment: A commenter provided several clarification edits.

FEMA Response: FEMA thanks the commenter for these suggestions. FEMA has added these clarifications to the RIA and updated the language as suggested.

Comment: A commenter suggested rounding dollar figures to an appropriate level of significance.

FEMA Response: FEMA appreciates this suggestion. FEMA adjusted the figures in the analysis, where feasible and appropriate.

Comment: A commenter stated that for the CISA floodplain analysis, the mid-point of +1’ and +10’ is +5.5’ would round to 6’. They recommend against characterizing the +5-ft CISA level as the mid-point.

FEMA Response: FEMA updated the RIA to clarify this was rounded down to 5-ft.

Comment: A commenter recommended deleting the “minimum, moderate, and maximum” for the SLR qualifiers throughout the document as the reader could come to a misunderstanding that the totality of the range for SLR rise is encompassed by the 8” and 59” figures.

²⁷⁵ FEMA assumed the reference to DOE-TVA is to the Tennessee Valley Authority although FEMA notes that TVA is not a component of the Department of Energy.

²⁷⁶ For example, USACE has a suite of resources on its website related to its implementation of CISA in its Civil Works Programs which detail how project delivery teams must consider the effects of sea level change when formulating, selecting, and evaluating project alternatives, and how to characterize potential project vulnerabilities to the effects of climate change on inland hydroclimatology. See <https://www.iwr.usace.army.mil/Missions/Flood-Risk-Management/Flood-Risk-Management-Program/About-the-Program/Policy-and-Guidance/Federal-Flood-Risk-Management-Standard/>. However, this information did not include relevant data that FEMA could use in its economic analysis related to the costs of implementation for facilities.

²⁷⁴ OMB Circular A-4, Regulatory Analysis, September 17, 2003, pages 9–10. Available at: <https://www.reginfo.gov/public/jsp/Utilities/a-4.pdf> (last accessed Apr. 29, 2024).

FEMA Response: FEMA removed the terms minimum, moderate and maximum from 8-inch, 36-inch, and 59-inch, respectively as suggested.

Comment: A commenter stated that a footnote in the Executive Summary of the RIA could be misleading, as it stated that “the United States has suffered more than \$1.7 trillion in flood-related damages over an approximately 40-year period.” The commenter noted that FEMA included tropical cyclones as a flood-related damage and stated that tropical cyclones entailed substantial wind making the \$1.7 trillion figure potentially misleading.

FEMA Response: FEMA clarified within the footnote that severe storms can include wind-related damages, but the data does not separate these damages out.

Comment: A commenter sought clarification on the use of “Federal Investments,” stating that FEMA’s use of the term might encompass actions taken by other agencies such as water resource agencies.

FEMA Response: FEMA’s rule only applies to projects it funds under its grant programs. All other Federal agencies will implement the FFRMS using their own processes and procedures. FEMA made clarifications in the RIA to clarify use of the term “federal investments.”

Comment: A commenter suggested editorial changes to refer to “9.11” as 44 CFR 9.11 as it was unclear when it is standing alone.

FEMA Response: FEMA appreciates this clarification. FEMA made this change to 44 CFR 9.11.

Comment: A commenter suggested editorial changes to Table ES–14.

FEMA Response: FEMA appreciates this suggestion. FEMA edited the RIA to reflect the commenter’s requested changes.

Comment: A commenter corrected miscited footnotes.

FEMA Response: FEMA appreciates this suggestion. FEMA updated the footnotes as suggested by the commenter.

Comment: A commenter suggested removing page reference within a footnote as the footnote did not address avoided loss as stated in the RIA.

FEMA Response: FEMA typically includes a page number so that the readers can easily find the referenced source. FEMA updated the page citation to properly reflect the location in the document.

Comment: A commenter suggested reconciliation of different statements in the text in the bottom paragraph on page 17, Table ES–1, and the text in the second paragraph in the RIA regarding

how FEMA analyzed the impact of each FFRMS expansion option as they are not consistent with one another.

FEMA Response: FEMA appreciates this suggestion. FEMA edited the document for consistency as suggested.

Comment: A commenter recommended re-titling Table ES–1 within the RIA since it was not consistent with its introductory text in the last paragraph on page 17.

FEMA Response: FEMA appreciates this suggestion. FEMA clarified the title to table ES–1.

Comment: A commenter recommended editorial changes to Table ES–3 within the RIA so that the rows were properly aligned.

FEMA Response: FEMA appreciates this suggestion. FEMA corrected this for the final rule.

Comment: A commenter recommended making editorial changes to the RIA and to use quotations around statements that were verbatim from an outside source.

FEMA Response: FEMA appreciates this suggestion. FEMA has gone through the document and made the recommended changes.

Comment: A commenter recommended FEMA edit a statement of present values, as present values are discounted by definition.

FEMA Response: FEMA appreciates this suggestion. FEMA removed the term undiscounted from the benefit statements for clarity purposes.

Comment: A commenter recommended FEMA edit the RIA to avoid confusion between discount rates and annual increases, providing an example within the Executive Summary of the RIA.

FEMA Response: FEMA clarified the wording to prevent confusion on the discount rates with annual increases.

Comment: A commenter pointed out inconsistency with the annualized CISA costs within Table ES–13 and ES–14.

FEMA Response: FEMA updated all of the costs for the final rule and reconciled this discrepancy.

Comment: A commenter requested FEMA delete an introductory sentence in RIA section 6.14 that states flooding is “by far the most common natural disaster type in the United States.”²⁷⁷ The commenter noted that NOAA distinguishes flooding as a category separate from tropical cyclones and storms which were both identified as having greater frequencies than flooding. The commenter also opined that storm damages are more properly

associated with wind damage than with flooding.

FEMA Response: FEMA appreciates the commenter’s concerns and deleted the sentence. Categorizing and calculating damage for different disaster types can be quite complex; however, the methodology set forth in the benefits section of the RIA is not dependent on resolution of these complexities.

Further, it is not necessary to prove that flooding is the most common natural disaster type to state, as FEMA has in section 6.14 of the RIA, that there are benefits to mitigating against flooding.

Comment: A commenter requested rationale on why FEMA selected a 10-year period for the RIA. The commenter also recommended FEMA change language in the RIA to state that the agency limited the dollar-valuation to the projects impacted in the first 10 years following the rule’s publication or expand the analysis to reflect economic concerns over the expected life of the regulation. The commenter stated additional discussion was needed regarding future effects and provided a number of questions around those effects including whether development within the floodplain would be progressively more likely to be diverted outside the floodplain over time and whether the costs of elevating or floodproofing would be expected to decline over time in real terms as contractors and architects adapt to the new requirements. The commenter asked whether it would be most appropriate to simply state that the first 10 years of the analysis was viewed as being a sample for the entire period or if the use of the maximum 8.5 RCP and the 59-inch SLR indicated a 50-year life for the regulation was suspected and that a shorter period of analysis was in order.

FEMA Response: FEMA appreciates the commenter’s concerns regarding the analysis period. FEMA has clarified language throughout the RIA to further address the commenter’s concerns. FEMA conducted the regulatory analysis using its standard 10 years of historical data and, based on this data, estimated the number of affected projects for the first 10 years after implementation of the rule. Circular A–4 directs that the timeframe for an agency’s analysis “should cover a period long enough to encompass all the important benefits and costs likely to result from the rule.” FEMA believes estimating the number of affected projects over the initial 10 years and benefits over their 50-year useful life captures all the important benefits (protection from flooding) and costs (construction costs) likely to result from

²⁷⁷ FEMA–2023–0026–0018.

the rule because FEMA does not expect a change in the types of costs or benefits after this time period. FEMA acknowledges that flooding is widely expected to increase in frequency and severity in the future,²⁷⁸ so estimating the number of affected projects and their associated benefits farther into the future would become increasingly inaccurate as conditions change and the expected frequency and severity of disasters increases. However, due to increased flooding frequency and severity, FEMA believes that the benefits of increasing the protection of structures in the future is expected to continue to justify the cost of doing so beyond the 10-year timeframe that FEMA used for this analysis.

Regarding other future effects such as diversion of projects outside of the floodplain, FEMA notes that this is discussed within the RIA in the Qualitative Discussion of Additional Potential Costs section. The effect of the rule could be to divert some projects out of the floodplain. However, it is not possible to state with a reasonable degree of certainty how many projects this will affect, or the costs or benefits associated with diverting these projects out of the floodplain, as FEMA does not currently track this information. The costs and benefits, and the decision to build inside or outside of the floodplain, will be dependent on the specific location or characteristics of a property or project.

Comment: A commenter stated that they could not find the “2022 Benefits Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains” file at [regulations.gov](https://www.regulations.gov) under docket ID FEMA-2023-0026.

FEMA Response: FEMA verified that all of the supporting documents were listed on the site during the comment period, including the report referenced.²⁷⁹

Comment: A commenter pointed out confusion with the footnote “25 FEMA’s project level data for IA, PA, and HMA delineate whether projects are in the Special Flood Hazard Area (1 percent annual chance floodplain) but do not show whether they are in the 0.2 percent chance floodplain” because FIRMs characteristically identify both the 1 percent annual chance floodplain

and the 0.2 percent annual chance floodplain.

FEMA Response: FEMA agrees that the 0.2 percent annual chance floodplain, in locations where that floodplain is mapped, is available on FIRMs. However, the data availability issue noted in the footnote is that FEMA’s project databases (e.g., IA, PA, HMA) do not include FIRM data, so FEMA is not able to accurately determine whether a project is in the 0.2 percent chance floodplain. FEMA’s project level data only indicate whether a project is located in the SFHA in most cases. Project databases do not contain accurate geolocation data, and addresses on file are for the recipient’s address, which may not be the project location, so FEMA was unable to locate projects on a FIRM, or determine which flood zone a project was located in.

Comment: A commenter stated that FEMA’s preferred policy approach is not clearly defined, as it consists of an unidentified mixture of CISA, FVA, and 0.2PFA, which requires the reader to speculate and make assumptions about the composition in order to draw conclusions. The commenter suggested FEMA discuss the uncertainty associated with the composition of the FFRMS approaches that comprise FEMA’s preferred policy approach.

FEMA Response: FEMA selected CISA as the preferred policy approach, since FEMA believes it has the potential to be the best and most well-informed approach to building resilience in an equitable manner and ensuring a reduction in disaster suffering. CISA is designed to meet current and future estimates of flood risks unique to the location and thus provide the best overall resilience, cost effectiveness, and equity. FEMA added clarification on what the primary approach is earlier in the RIA.

FEMA acknowledges that its policy—which requires use of FVA and 0.2PFA when CISA data are not available and actionable—will result in an unknown mixture of projects using CISA, FVA, and 0.2PFA. OMB Circular A-4 suggests using central estimates “where such information exists” but authorizes the use of upper and lower bounds where it does not, together with any available information that might help in qualitatively determining which scenario is most likely to occur. FEMA conducted its analysis to consist of a range of potential costs, benefits, and transfers. FEMA analyzed the impact of the FVA, 0.2PFA, and CISA for each of the programs, PA, IA, and HMA, as if each approach were the only FFRMS expansion option. FEMA discussed that because the composition of applied

FFRMS approaches will continue to change with the addition of CISA data over time, there is significant uncertainty in any such estimates. Accordingly, FEMA estimated the costs of the requirements for each of the approaches separately to create upper and lower bounds estimates of the possible outcomes. In addition, as discussed above, FEMA presents CISA as the primary estimate for the impacts of the rule because it is FEMA’s preferred FFRMS approach and therefore, over time, it will become the most widely used FFRMS approach.

Comment: A commenter disagreed with FEMA’s statement about how “RCP 4.5 and 8.5 are widely accepted scenarios that represent medium and low efforts to curb emissions, respectively.” They suggested better explaining the definitions of RCP 4.5 and 8.5 based on the EPA’s language about RCPs.

FEMA Response: FEMA appreciates this suggestion. FEMA updated the use of RCP 4.5 and 8.5 and the definitions for the Final Rule RIA.

Comment: A commenter suggested explaining the terms “low estimate” and “high estimate” earlier in the RIA. They also suggested that instead of using a range, FEMA should present a best estimate for these values and discuss the uncertainty associated with such values in the Risk and Uncertainty section of the document. They also requested a sensitivity analysis showing how the decision might be affected if the values used proved to be unduly high or low. The commenter suggested that because of the number of variables contributing to the ranges (e.g., discount rate, high and low), the presentation of information would be clearer if single, best-estimate, rounded values were used in the analysis.

FEMA Response: OMB Circular A-4 suggests using central estimates “where such information exists” but authorizes the use of upper and lower bounds where it does not. In the instances where FEMA uses a range, it is because FEMA does not have adequate justification for a single best estimate. FEMA conducted its analysis to consist of a range of potential costs, benefits, and transfers. For example, as discussed above, FEMA analyzed the impact of the FVA, 0.2PFA, and CISA for each of the programs, PA, IA, and HMA, as if each approach were the only FFRMS expansion option because it is unknown exactly how many projects will be subject to the FVA, 0.2PFA, or CISA requirements under the final rule, and how use of CISA will change as more data become available over time. Because FEMA analyzed each approach

²⁷⁸ The Third National Climate Assessment. <https://nca2014.globalchange.gov>, (last accessed Apr. 29, 2024).

²⁷⁹ FEMA, A Benefits Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains, July 2002, available at: <https://www.regulations.gov/document/FEMA-2023-0026-0003>.

separately, it is unable to provide a primary estimate, and instead had to rely on a range of possible impacts. In addition, FEMA does not have data to estimate whether certain non-residential new construction projects will elect to floodproof or elevate and therefore also used a range for the cost of meeting the rule's increased construction standards.

FEMA appreciates that the presentation of the range of impacts may not be as clear as a single point estimate. FEMA presents this information in tables, to help more clearly convey the information, and has also reviewed the language and streamlined for increased clarity.

Comment: A commenter provided editorial suggestions to the statement: "CISA is the only approach that ensures projects are designed to meet current and future flood risks unique to the location and thus provides the best overall resilience, cost effectiveness, and equity." The commenter suggested the claim that CISA makes such an assurance is an overstatement of the risk reduction from the CISA.

FEMA Response: FEMA appreciates this suggestion. FEMA accepted this change in part: "CISA is designed to meet current and future estimates of flood risks unique to the location and thus provide the best overall resilience, cost effectiveness, and equity."

Comment: A commenter provided suggested edits to FEMA's statement regarding whether the action was a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094.

FEMA Response: This is standard language that FEMA uses in RIAs. FEMA provided footnotes to this statement clarifying the relevant sections of Executive Order 12866.

Comment: A commenter recommended presenting the CISA-only analysis as an alternative or explaining why it was found to be unreasonable and including it in the section of the document on alternatives considered but not selected. If FEMA found a CISA-alone approach to be unreasonable, the commenter recommended changing all blanket statements in the document that describe CISA as the best approach for achieving overall resilience, cost effectiveness, and equity.

FEMA Response: The CISA is one of three approaches available under the FFRMS, and FEMA's preferred approach. However, because the CISA data is not available nationwide, a CISA-only approach is not currently feasible, and other FFRMS approaches are needed for areas where the CISA is not available. FEMA's implementation of the FFRMS allows for the use of the

most appropriate approach depending on the data available for a given project. Although FEMA estimated the impacts of the CISA for affected programs as if it were the only FFRMS expansion option, just as it did for the FVA and 0.2PFA, FEMA was unable to use actual CISA estimates, as they are not yet available nation-wide and instead used an estimate. As the CISA data becomes more available, FEMA expects it to be the more widely-adopted. FEMA made clarifying edits to statements describing the CISA as the preferred approach.

Comment: A commenter encouraged FEMA to consider implications of FEMA's FFRMS policy on benefit-cost analyses for flood mitigation assistance grants.

FEMA Response: FEMA appreciates the commenter's concerns. FEMA's FFRMS policy will generally not change BCA requirements for FEMA programs. Certain Hazard Mitigation Assistance programs and Public Assistance projects are subject to a Benefit-Cost Analysis prior to approval, where the mitigation action must be determined to be cost-beneficial using FEMA's BCA tool. For FEMA's FMA program, the costs of additional elevation above the base flood elevation will be considered as part of the BCA. Currently, the BCA tool includes pre-calculated benefits that streamline the cost-effectiveness determination for structure elevation projects are limited to structures where some part of the structure is within the 1 percent annual chance floodplain. For an elevation project where the entire structure footprint is outside the 1 percent annual chance floodplain, FEMA will also require a BCA to show cost-effectiveness. For FEMA's PA program, cost-effectiveness requirements apply only to Hazard Mitigation measures on projects to restore disaster damaged structures and facilities. FEMA notes that any increased costs are generally eligible for funding under FEMA's assistance programs subject to cost share requirements. FEMA acknowledges that FFRMS requirements may impact individual BCA results, with the potential to cause some projects to pass that otherwise wouldn't, and vice-versa, but is not able to predict this for future individual projects because project-level analysis is not generalizable nationwide. For structures, FEMA estimates the marginal cost of implementing FFRMS to be relatively low, ranging from 0.32 percent (1 foot of elevation for new construction) to 8.07 percent (4 feet of dry floodproofing for a building retrofit) of total project cost, depending on the elevation required and the type of project. Given available evidence

showing relatively small costs and even positive increases in Benefit-Cost Ratio in connection with additional elevation for studied residential buildings, FEMA does not expect FFRMS requirements to adversely affect the BCR for a large volume of projects.^{280 281}

Comment: A commenter questioned the baseline data used for the floodplain expansion analysis in Appendix A. The commenter stated that FEMA should have compared the 1' freeboard measured to the "Effective/Preliminary 1 percent annual chance floodplain" instead of the "replotted" 1 percent annual chance floodplain.

FEMA Response: The goal of the floodplain expansion analysis performed by FEMA is to estimate the number of additional projects that would be affected by a requirement for a higher vertical elevation, and thus horizontal expansion, of the floodplain. When FEMA calculated the FFRMS floodplains for different freeboard values, FEMA used the latest high-accuracy ground elevation data. The original 1 percent annual chance floodplain boundaries were likely calculated using older ground elevation data. For consistency, FEMA compared the FFRMS freeboard-based floodplains to a 1 percent annual chance floodplain redrawn using the new ground elevation data. This approach provides the most consistent comparison of the difference in area between the 1 percent annual chance floodplain and the FFRMS floodplain (*i.e.*, specific levels of freeboard added to the 1 percent annual chance flood elevations). This approach does not account for differences between the redrawn 1 percent annual chance floodplain boundaries and the original 1 percent annual chance floodplain boundaries. Since the goal is to produce a statistical estimate of the impact of freeboard, FEMA assumed the differences between the original 1 percent annual chance boundaries and the redrawn 1 percent annual chance boundaries would be largely random and not essential to the goal of the estimate.

Comment: A commenter assessed that FEMA's statements that a study upon

²⁸⁰ National Institute of Building Sciences. Multi-Hazard Mitigation Council. "Natural Hazard Mitigation Saves." 2019. https://www.nibs.org/files/pdfs/NIBS_MMC_MitigationSaves_2019.pdf (last accessed Apr. 29, 2024). *See, for example, Table 5: BCRs for various heights above BFE for new coastal V-zone buildings and Table 2-2: Summary BCR results for sampled counties susceptible to riverine flooding.*

²⁸¹ A Benefits Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains. FEMA. Draft, July 2022, pg. 16, available at: <https://www.regulations.gov/document/FEMA-2023-0026-0003>.

which it relied considered various levels of SLR “by 2100” is problematic, as the study does not extend as far as the year 2100, and it actually only extends some 60 years into the future. The commenter sought clarification.

FEMA Response: FEMA would like to distinguish between the coastal and riverine flood studies used within the 2022 Report.²⁸² The riverine analysis considered two climate change scenarios to evaluate the amount of increase or decrease in riverine flood elevations over the next 50 years. These evaluated two widely accepted scenarios of the Representative Concentration Pathways (RCP) 4.5 and 8.5, which represent medium and low efforts to curb emissions.

The coastal study within the 2022 Report considered 12 different locations along a hypothetical coastal transect to evaluate the impact of various wave conditions in Zone A (areas with wave heights less than 1.5 feet) subject to coastal storm surge. The sea level rise conditions replicated a 2016 evaluation considered 8-inch, 20-inch, 39-inch, and 59-inch sea level rise by 2100.²⁸³ The sea level rise assumptions are explained in the 2022 report. Specifically, when evaluating the increases in flood depths, the rise scenarios were considered in 10-year increments from 2022 to 2100, but the evaluation of the benefits is limited to the 50-year useful life of a project (*i.e.*, from 2022–2072). The assumed increase in flood depths is shown in Table 1 of the report in 10-year increments.

Consistent with FEMA’s BCA guidance,²⁸⁴ FEMA selected the 50-year project useful life which is the timeframe evaluated to determine the cost-effectiveness for a public building and is consistent with the assumption in the FEMA BCA Toolkit. FEMA’s analysis focuses on the costs, benefits, and transfer payments (*i.e.*, impacts on FEMA grants), that will result over a 50-year period from the application of the requirements of the final rule to those projects, for a total period of analysis spanning 60 years. For example, if a structure is built in Year 10, the analysis

covers 50 years of costs, benefits, and transfers for that structure starting in Year 10. However, if a structure is built in Year 11, that is outside of the first 10 years, and so the analysis does not consider the costs, benefits, or transfers of the FFRMS requirements on that structure.²⁸⁵

III. Discussion of Changes

This rule makes changes to the NPRM in response to comments received, as well as minor technical edits. Specifically, in § 9.7(c)(3), FEMA made a clarifying edit by adding the words “information from” before the colon, such that the sentence reads “In obtaining the best available information, FEMA may consider other FEMA information as well as other available information, such as information from:”

FEMA also edited § 9.7(c)(3)(iv) to include the National Park Service as an agency within the Department of the Interior where FEMA obtains information. FEMA also edited § 9.7(c)(3)(ix) to include Indian Tribal governments; as revised, this paragraph now reads, “Agencies of State, Regional, and Indian Tribal governments.” While FEMA always considered Tribal information, the edits further confirm the agency’s commitment to doing so. The changes made to § 9.7(c)(3) clarify that FEMA considers certain relevant and appropriate data in making the floodplain determination under part.

FEMA is also making minor technical edits in § 9.7(c)(1)(i)(C) and § 9.11(d)(3)(ii). In § 9.7(c)(1)(i)(C), FEMA is adding appropriate hyphenation to state “0.2-Percent-Annual-Chance Flood Approach (0.2PFA): The 0.2 percent annual chance flood” for consistency with the Revised Guidelines. In § 9.11(d)(3)(ii), FEMA is correcting a grammatical error from “water tight” to “watertight.”

²⁸⁵ If FEMA limited the analysis to only 10 years of impacts, it would consider all of the costs and transfers but only a small portion of the benefits from additional protection from flood events because the life of the structure is more than 10 years. After year 10, the final rule would continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage. To estimate the future number of impacted structures, FEMA used the average number of projects that would have been affected by this rule had it been in place over the past 10-year period, assuming the next 10 years would look largely like the past 10 years. FEMA chose to limit the analysis to 10 years of affected structures because estimating the number of affected projects and their associated benefits further into the future—that is, further from historical disaster data would become less accurate as conditions change and the expected frequency and severity of major disasters increases. Accordingly, FEMA’s analysis focuses on the 50-year impacts of the rule on projects that take place in the initial 10-year period, for a total period of analysis spanning 60 years.

²⁸² A Benefits Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains. FEMA. Draft, July 2022, pg. 16, available at: <https://www.regulations.gov/document/FEMA-2023-0026-0003>.

²⁸³ FEMA, 2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas. Available at: <https://www.regulations.gov/document/FEMA-2015-0006-0379>.

²⁸⁴ BCA Reference Guide, Appendix D. Project Useful Life Summary (June 2009). Available at: https://www.fema.gov/sites/default/files/2020-04/fema_bca_reference-guide.pdf (last accessed May 15, 2024).

FEMA’s FFRMS policy is also being finalized with the publication of this rule and will be effective with the rule’s implementation. FEMA is making minor clarifying edits to the FFRMS policy consistent with commenters’ suggestions by further clarifying the use of the 0.2PFA in coastal areas and making other technical edits to the document for readability. Specifically, FEMA is making technical formatting and grammatical edits on pages 1, 2, 3, 4, 7, 8, and 13. FEMA is adding clarifying language in section C. In section C.2, FEMA is eliminating the reference to wave action in coastal areas at the end of the paragraph. In section C.3.a, FEMA is adding the following clarifying text in footnote 14: “In coastal areas Flood Insurance Rate Maps (FIRMs) and Flood Insurance Studies (FISs) provide 1 percent AC flood elevations that account for the effects of wave action. However, 0.2 percent AC flood elevations are generally stillwater elevations that do not account for the effects of wave action. In coastal areas, if the 0.2 percent AC flood elevation does not account for the effects of wave action, the FVA flood elevation must be used.” FEMA is further eliminating section C.3.c consistent with these edits. FEMA also edited Figure 1 in the FFRMS policy to clarify “AC” means “annual chance” at a commenter’s request and reflect the clarifications to C.3 referenced above. Additionally, FEMA updated section G.2 to reflect “Flood Risk Mitigation for Facilities.” FEMA removed the term “non-structure” in that section because commenters expressed confusion about the term.

IV. Regulatory Analyses

A. Executive Order 12866, Regulatory Planning and Review, as Amended, and Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review), directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Management and Budget (OMB) has designated this

rule a “significant regulatory action” as defined under section 3(f) of Executive Order 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1) because its annual effects on the economy do not exceed \$200 million in any year of the analysis. Accordingly, OMB has reviewed this rule.

This analysis provides an assessment of the potential costs, benefits, and transfer payments from the Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard (FFRMS) Final Rule. For further detail please refer to the Regulatory Impact Analysis (RIA) in the docket accompanying this rule.

FEMA is amending 44 CFR part 9 Floodplain Management and Protection of Wetlands and issuing a supplementary policy²⁸⁶ to implement the FFRMS and update the agency’s 8-step decision-making process used to determine whether an action would be located within or affect a floodplain, and if so, whether and how to continue with, or modify, the action.

The FFRMS is a flood resilience standard that is required for Federally funded projects and provides a flexible framework to increase resilience against flooding and to help preserve the natural values of floodplains and wetlands. A floodplain is any land area that is subject to flooding and refers to geographic features with undefined boundaries. FEMA will incorporate the FFRMS into its existing processes to ensure that the floodplain for an action subject to the FFRMS is expanded from the current 1 percent annual chance (100-year) floodplain based on the one percent annual chance elevation²⁸⁷ to a higher vertical elevation and corresponding horizontal floodplain; and that, where practicable, natural systems, ecosystem processes, and nature-based approaches will be considered when developing alternatives to locating Federal actions in the floodplain.

Under current FEMA regulations set out in 44 CFR part 9, the floodplain is defined as the 100-year floodplain (1

percent annual chance) for non-critical actions and the 500-year floodplain (0.2 percent annual chance) for critical actions. New construction or substantial improvement of structures located in a floodplain must be elevated to or above the 1 percent annual chance (100-year) flood level or base flood elevation (BFE). For critical actions, the new construction or substantial improvement of structures must be elevated to or above the 0.2 percent annual chance (500-year) flood level. Non-residential structures may be appropriately floodproofed rather than elevated to meet the applicable flood level.

This rule will implement the supplemental FFRMS policy in the expanded floodplain and codify implementation of the supplemental FFRMS policy in the current floodplain. FEMA has interim policies for PA and HMA that partially implement FFRMS, as discussed in further detail below. Depending on the program, these programs apply the supplemental FFRMS policy either to the base floodplain, or to both the 100-year (base floodplain) and 500-year floodplain (for critical actions). Following guidance in OMB Circular A-4, FEMA assessed each impact of this rule against a pre-guidance baseline. The pre-guidance baseline is an assessment against what the world would be like if the relevant guidance (*i.e.*, the partial interim policies for PA and HMA) were not implemented.

At the time the Notice of Proposed Rulemaking (NPRM) RIA was conducted, these partial implementation policies had been in place for less than 2 years. These policies were issued as temporary, partial implementation of the FFRMS until FEMA could implement it through this rulemaking. FEMA conducted this Regulatory Impact Analysis against a pre-statutory baseline to capture the economic impacts of the FFRMS and more accurately to measure the impacts of the rule against the world without the interim PA and HMA policies.

Under the final rule, the Climate-Informed Science Approach (CISA) would result in a flood elevation and corresponding horizontal expansion floodplain determination utilizing the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. The CISA is FEMA’s preferred policy approach, as FEMA believes it has the potential to be the best and most well-informed approach to building resilience in an equitable manner and ensuring a reduction in disaster

suffering. CISA is designed to meet current and future estimates of flood risks unique to the location and thus provide the best overall resilience, cost effectiveness, and equity. The FFRMS requires FEMA to consider the criticality of the action involved, the availability and actionability of data, and equity concerns, as further explained in the supplementary policy. As actionable climate data are not currently available for all locations, FEMA will utilize the Freeboard Value Approach (FVA) and 0.2-Percent-Annual-Chance Flood Approach (0.2PFA) alternatives in the absence of actionable CISA data. Specifically:

- For critical actions:²⁸⁸ FEMA will use the higher of the +3-foot FVA floodplain or the 0.2PFA floodplain.²⁸⁹ Where the 0.2PFA data is not available, the +3-foot FVA will be utilized.
- For non-critical actions: FEMA will use the lower of the +2-foot FVA or 0.2PFA.²⁹⁰

The floodplain established by the FVA is the equivalent of the 1 percent annual chance floodplain (also known as the 100-year flood), plus either 2 or 3 feet of vertical elevation, as applicable based on criticality, and a corresponding increase in the horizontal extent of the floodplain. The increased horizontal extent will not be the same in every case. When the same vertical increase is applied in multiple actions subject to the FFRMS in different areas, the amount of the increase in the horizontal extent of the respective floodplains will depend upon the topography of the area surrounding the proposed location of the action.

The term 0.2PFA refers to the elevation to which floodwater is anticipated to rise during the 0.2 percent annual chance flood (also known as the 500-year flood) and the associated floodplain. The 0.2PFA generally covers a larger area than the 1 percent annual chance floodplain.

²⁸⁸ A critical action is any activity for which even a slight chance of flooding would be too great. A non-critical action is any activity not considered a critical action.

²⁸⁹ For all projects in coastal areas, if the 0.2 percent annual chance flood elevations do not account for the effects of wave action, the appropriate FVA must be used to determine the FFRMS floodplain.

²⁹⁰ While application of the 0.2PFA may provide a more consistent reduction of flood risk as it is probability based, the relationship to the FVA varies depending on topography (*i.e.*, in some instances the 0.2PFA may result in a lower flood elevation than the FVA). Application of only the 0.2PFA without a comparison to the FVA may result in building to a higher resilience standard than is necessary.

²⁸⁶ The final rule and policy contain content that is interrelated but not identical. For purposes of this analysis, FEMA considers both documents as a single proposal.

²⁸⁷ The one percent annual chance elevation refers to the elevation to which floodwater is anticipated to rise during the 1 percent annual chance flood (also known as the base or 100-year flood). Under Executive Order 11988, non-critical actions must be elevated or floodproofed to at least the one percent annual chance elevation (or base flood elevation). Critical actions must be elevated or floodproofed to at least the 0.2 percent annual chance flood (or 500-year) elevation.

Projects that are located near a Special Flood Hazard Area (SFHA),²⁹¹ but not in it, may be in the FFRMS floodplain. At the time the NPRM was published, there were no FEMA products depicting the boundary of the FFRMS floodplain. For this reason, FEMA and its interagency partners have developed and are continuing to develop various tools, including the FFRMS Floodplain Determination Job Aid published on FEMA's website and in the public docket with this rulemaking and a web-based decision support tool, Federal Flood Standard Support Tool (FFSST), that will provide the agency with guides to determine which FFRMS floodplain approach has available and actionable data, in map form, thus should be used for each project. The FFRMS Job Aid helps Federal agencies and their non-federal partners (including potential Federal financial aid recipients) conduct a screening to determine if a proposed Federally funded action will be located within an FFRMS floodplain, based on any of the three approaches in accordance with Sec. 2(a)(1) of Executive Order 11988, as amended. FEMA will leverage the FFRMS Job Aid for determining the FFRMS floodplain when the final rule is implemented. FEMA will continue to collaborate across the Federal government to continue to develop the FFSST to facilitate the implementation of the CISA and the FFRMS.

FEMA developed a flexible approach to implementing the FFRMS to maximize the net benefits—quantified and unquantified—of the rule. Floods are expected to be more frequent and more severe over the next century due to the projected effects of changing conditions.^{292 293} The ocean has warmed, polar ice has melted, and porous landmasses have subsided.²⁹⁴ The global sea level has risen by about 8 inches since reliable record keeping began in 1880.²⁹⁵ It is projected to rise upwards of 1 to 4 feet by 2100, affecting many coastal areas.^{296 297 298} Floods are

²⁹¹ The Special Flood Hazard Area is the area designated on FEMA regulatory mapping products depicting a 1 percent annual chance floodplain.

²⁹² National Oceanic and Atmospheric Administration. U.S. Department of Commerce. "Climate change impacts." <https://www.noaa.gov/education/resource-collections/climate/climate-change-impacts>. Last accessed February 15, 2022.

²⁹³ U.S. Global Change Research Program (2014). Climate Change Impacts in the United States: The Third National Climate Assessment. Available at: <https://repository.library.noaa.gov/view/noaa/19485>. Page 20. Last accessed: April 16, 2024.

²⁹⁴ Ibid [page 21].

²⁹⁵ Ibid [page 21].

²⁹⁶ Global Change Research Program (2014). Climate Change Impacts in the United States: The Third National Climate Assessment. Available at:

costly natural disasters; between 1980 and 2022, the United States suffered more than \$2.0 trillion (in 2022 dollars) in flood-related damages.²⁹⁹ This final rule will help protect FEMA funded investments from future floods and will help minimize harm in floodplains by changing the standards used to determine future risk for FEMA-funded new construction and substantial improvement, and/or to address substantial damage to Federally funded projects.

The requirements of this rule will apply to grants under FEMA programs such as Individual Assistance (IA), Public Assistance (PA), and Hazard Mitigation Assistance (HMA), as well as grants processed by FEMA's Grants Programs Directorate (GPD) (involving grants for preparedness activities), for projects funding new construction, substantial improvement, or repair of substantial damage. The primary focus of this analysis is to estimate the costs and benefits resulting from a higher vertical elevation and associated horizontal expansion of the floodplain for specific projects paid for with Federal funds. The expected impacts of this final rule primarily result from the cost of the increase in elevation or floodproofing requirements of structures in the FFRMS floodplain. The majority of these costs will be funded by FEMA through several grant programs. For the grant programs that have a cost-share requirement, FEMA grant recipients typically will bear about 25 percent of the elevation and floodproofing project costs. Additionally, FEMA expects to incur costs for administration of the FFRMS requirements, including training FEMA personnel.

To estimate the number of projects that will be subject to the requirements of this rule, FEMA used historical PA, IA, and HMA data. First, FEMA

<https://repository.library.noaa.gov/view/noaa/19485>. Page 20. Last accessed: April 16, 2024.

²⁹⁷ Environmental Protection Agency (EPA). *Supplementary Material for the Regulatory Impact Analysis for the Supplemental Proposed Rulemaking*. "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review." Page 36. https://www.epa.gov/system/files/documents/2022-11/epa_scghg_report_draft_0.pdf. Last accessed: September 14, 2023.

²⁹⁸ The EPA uses the Framework for Assessing Changes To Sea-level (FACTS) and Building Blocks for Relevant Ice and Climate Knowledge (BRICK) sea-level rise models for their projections.

²⁹⁹ *Climate.gov*. "U.S. billion-dollar weather and climate disasters." <https://www.ncei.noaa.gov/access/billions/summary-stats/US/1980-2022>. Last accessed October 31, 2023. Flood related damages are from flooding, severe storms, and tropical cyclones. Data is CPI adjusted. Severe storms can include wind-related damages, but the source does not separate data out by type of damage.

estimated the number of past new construction, substantial improvement, or repairs to substantial damage projects that are in the existing floodplain. Next, FEMA relied upon data from samples of floodplain expansion at varying levels of freeboard in inland and coastal areas to estimate an average percentage expansion of the floodplain under each of the three FFRMS approaches. FEMA then multiplied the expansion percentages by the estimated number of projects in the current floodplain to estimate the number of projects that will be in the expanded floodplain under each of the FFRMS approaches.

To estimate the cost of the FFRMS elevation requirements, FEMA used reports from the National Flood Insurance Program (NFIP) to determine the increased cost per square foot associated with elevation and floodproofing. FEMA presents the costs as a range because of uncertainty about whether new construction projects would choose to floodproof or elevate.

Finally, to present the total impacts of the final rule, FEMA analyzed the impact of the FVA, 0.2PFA, and CISA for each of the programs, PA, IA, and HMA, as if each approach were the only FFRMS expansion option. This is because it is unknown exactly how many projects will be subject to the FVA, 0.2PFA, or CISA requirements under the final rule, as it will continue to change with the addition of CISA data over time. Accordingly, FEMA estimated the costs of the requirements for each of the approaches separately. This allows FEMA to create a range for each approach. FEMA is opting to use this methodology because it allows for estimation of the highest and lowest probable costs, transfers, and benefits associated with each of the FFRMS expansion options for each of the programs.

FEMA limited its dollar-valuation to the projects impacted in the first 10 years after the rule's effective date.³⁰⁰ FEMA's analysis focuses on the costs, benefits, and transfer payments (*i.e.*, impacts on FEMA grants), that will result over a 50-year period³⁰¹ from the application of the requirements of the final rule to those projects, for a total period of analysis spanning 60 years. For example, if a structure is built in Year 10, the analysis covers 50 years of

³⁰⁰ FEMA used an average of the number of affected projects during the prior 10-year period to estimate the average annual impacts of the future 10-year period.

³⁰¹ The 50-year period is based on the 2022 Report, which assumed 50-year useful life for public buildings. Therefore, FEMA estimated such benefits over a 50-year period. Please see section 7.14.2 of the RIA for more information.

costs, benefits, and transfers for that structure starting in Year 10. However, if a structure is built in Year 11, that is outside of the first 10 years and so the analysis does not consider the costs, benefits, or transfers of the FFRMS requirements on that structure.³⁰² The costs and transfers occur in the first 10 years of the 60-year period because that is when the initial investment to elevate or floodproof those projects takes place. This is an upfront cost that occurs when the project is constructed. However, the

benefits of the final rule are estimated over the 50-year useful life of the affected structures.

The table below provides the estimated number of structures and facilities that will be affected by the final rule over the first 10 years, assuming that each approach is the only expansion option. Structures that are walled and roofed buildings, will comply with the FFRMS through elevating or floodproofing to the required height. Facilities, which are

any human-made or human-placed items other than structures, such as roads and bridges, will require different mitigation measures in order to comply with the increased resiliency standard of the final rule. The monetized impacts of this rule are representative of the floodproofing and elevation mitigation measures that will be required of structures. However, for reasons explained in more detail later, FEMA was unable to monetize the impacts of the rule for facilities.

Table 4: Estimated Number of Structures and Facilities Affected by the Final Rule in Years 1-10 For Each Approach as if Each Approach Were the Only Expansion Option^{[303][304]}

FFRMS Approach	Structures			Total Structures	Facilities		Total Facilities	Total Projects
	PA	IA	HMA		PA	HM A		
FVA	899	1,434	7,755	10,088	26,144	841	26,985	37,073
0.2PFA	688	1,434	7,712	9,834	26,144	841	26,985	36,819
CISA	1,154	1,924	10,398	13,476	26,144	841	26,985	40,461

The final rule will increase construction and resiliency standards for FFRMS-affected structures and facilities. FEMA considers implementing these standards, whether through higher vertical elevation, floodproofing, or other mitigation measures, to be new economic activity that will result from this rule. Accordingly, these compliance activities are categorized as costs of this rule.

FEMA analyzed the impact of the FVA, 0.2PFA, and CISA for each of the programs, PA, IA, and HMA, as if each approach were the only FFRMS expansion option. FEMA selected the CISA as the primary approach as it is the preferred option. Using the CISA as the primary approach, FEMA has estimated that this final rule will affect 13,476 PA, IA, and HMA structures over the first 10 years. The low estimate³⁰⁵ cost will be between \$134.0 million and \$110.4 million, discounted at 3 and 7 percent respectively, with a 60-year

annualized cost between \$4.8 million and \$7.9 million, discounted at 3 and 7 percent. The high estimate cost will be between \$169.8 million and \$139.9 million, discounted at 3 and 7 percent respectively, with a 60-year annualized cost between \$6.1 million and \$10.0 million, discounted at 3 and 7 percent respectively. These costs include additional training for FEMA staff, as well as the total cost for additional elevation and floodproofing. FEMA is unable to quantify the cost for increased resiliency standards for an estimated 26,985 affected facility projects over the first 10-year period of the analysis. Additionally, FEMA is unable to quantify the cost for projects that may be diverted out of the floodplain, impacts to projects with existing basements, project delays, or forgone projects that may result from this rule.

Because the cost to implement the FFRMS mitigation measures will be shared between FEMA and grant

recipients according to statutory cost shares, there are also important distributional impacts. The majority of these costs will be borne by FEMA through additional grants (a transfer from FEMA to grant recipients). Grant recipients will bear the remaining costs. Using the CISA as the primary approach, FEMA estimates that this final rule will affect 13,476 structures in the first 10 years. FEMA presents the change in transfer payments from FEMA to grant recipients as a range because of uncertainty regarding whether new construction projects would be floodproofed or elevated. The low estimate ranges between \$104.7 million and \$86.2 million, discounted at 3 and 7 percent respectively, with a 60-year increase in transfers between \$3.8 million and \$6.1 million annually, discounted at 3 and 7 percent respectively. The high estimate ranges between \$134.2 million and \$110.5 million, discounted at 3 and 7 percent

³⁰² If FEMA limited the analysis to only 10 years of impacts, it would consider all of the costs and transfers but only a small portion of the benefits from additional protection from flood events because the life of the structure is more than 10 years. After year 10, the final rule would continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage, but FEMA chose to limit the analysis to 10 years of affected structures because it used 10 years of historical data, and due to changing conditions, projecting impacts past 10 years would become less accurate due to an expected increase in the frequency and severity of major disasters. Accordingly, FEMA's analysis focuses on the 50-year impacts of the rule on projects that take place in the initial 10-year period, for a total period of analysis spanning 60 years.

³⁰³ From 2013–2022, for PA, FEMA funded a total of 199,993 projects for \$172.6 billion (CPI adjusted

to 2022 dollars). Of that total number of projects, FEMA funded \$22.8 billion (CPI adjusted to 2022 dollars) for all PA Category E projects, which is about 13.2 percent (\$22.8 billion ÷ \$172.6 billion) of the total FEMA PA funding. For PA Category E projects within the floodplain, FEMA funded \$1.2 billion (CPI adjusted to 2022 dollars) which is about 0.7 percent (\$1.2 billion ÷ \$172.6 billion) of all FEMA PA funding or 2,437 projects which is about 1.2 percent (2,437 projects ÷ 199,993 projects) of all FEMA PA projects.

From 2013–2022, for HMA, FEMA funded a total of 8,761 projects. There are no data fields that show whether a project is located in a floodplain. Therefore, FEMA used the assumption that all HMA projects were located in the floodplain. This may lead to an overestimate in the costs associated with HMA projects.

From 2013–2022, for IA, FEMA funded a total of 13,576 THU and 184 PHC projects. FEMA assumed

that 11.1 percent of IA PHC and THU projects would be located in the floodplain, based on PA project data. Accordingly, FEMA estimated a 20 (184 PHC projects × 11.1 percent) PHC projects and 1,507 (13,576 THU projects × 11.1 percent) THU projects in the current floodplain in years 1–10 of the analysis.

³⁰⁴ These counts are based on the number of closed or obligated projects at the time of analysis. It can take several years for a project to close out or reach the obligation status after the disaster year.

³⁰⁵ FEMA estimated a range of possible costs since it was not able to accurately estimate the number of new construction projects that would elect to elevate versus those that would elect to floodproof, so estimates are provided for both the cost of elevating all new construction projects and the costs of floodproofing all new construction projects.

respectively, with a 60-year increase in transfers between \$4.8 million and \$7.9 million annually, at 3 and 7 percent respectively.

Grant recipients will be responsible for between \$22.6 million and \$18.6 million, discounted at 3 and 7 percent respectively, with a 60-year annualized amount between \$0.8 million and \$1.3 million, at 3 and 7 percent respectively for the low estimate. The high estimate ranges between \$27.8 million and \$22.9 million, discounted at 3 and 7 percent respectively, with a 60-year annualized amount of \$1.0 million and \$1.6 million, at 3 and 7 percent respectively. Not included in these estimates are the additional grants FEMA will provide or the additional costs recipients will incur for their portion of the cost share, for any of the elevation and floodproofing costs that FEMA is unable to monetize.

FEMA has been able to quantify benefits for a small portion of projects affected by the rule. Using CISA as the

primary approach, FEMA estimates that 1,154 PA Category E (Public Buildings)³⁰⁶ projects will be subject to the FFRMS in the first 10 years. Assuming a 59-inch Sea Level Rise,³⁰⁷ FEMA estimates that the present value benefits of one additional foot of freeboard for the 50-year useful life of projects undertaken during the 10-year period of analysis ranges at the low end between \$56.1 million and \$46.2 million, discounted to the beginning of Year 1 at 3 and 7 percent respectively, with a 60-year annualized benefit between \$2.0 million and \$3.3 million.

³⁰⁶ FEMA Public Assistance. <https://www.fema.gov/fact-sheet/fema-public-assistance-0>. Accessed April 23, 2024.

³⁰⁷ For FEMA's primary estimate, FEMA used 59 inches of SLR, due to it being the closest SLR option to FEMA's +5-ft assumption for CISA. CISA is the preferred approach for FFRMS if the data are available. Since 5 ft is equivalent to 60 inches (5 × 12 inches per foot), 59-inch SLR is the closest SLR option that FEMA has available to use for this portion of the analysis.

The high estimate ranges between \$66.1 million and \$54.4 million, discounted to the beginning of Year 1 at 3 and 7 percent respectively, with a 60-year annualized benefit between \$2.4 million and \$3.9 million. These quantified benefits include estimates of avoided physical damage, avoided displacement, and avoided loss of function for the 1,154 PA Category E projects over their 50-year useful life. In addition, unquantified benefits of this final rule include the reduction in damage to 12,322 affected IA and HMA structures and their contents from future floods, 26,985 PA and HMA facilities, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding.

Table 5 shows the summary of the total costs, benefits, and distributional impacts of the final rule.

Table 5: Summary of the Impacts of the Final Rule (2022\$)

Category	Summary
Regulatory and Policy Changes	Adds language to incorporate the best available and actionable science into determinations for Federally funded projects.
	Adds approach to developing the alternative actions, the agency shall use, where possible, natural systems, ecosystem processes, and nature-based approaches.
	Updates the dollar thresholds for the applicability of the 8-step process to repairs under sections 406 and 407 to \$18,000 for 2022. Also adds that the thresholds will be adjusted annually for inflation.
	Establishes a process to determine whether the FFRMS action is located in a wetland and/or a floodplain.
	Incorporates FFRMS approaches into regulations. FEMA's supplementary policy will be using CISA as the preferred approach to establishing the FFRMS floodplain and resilience requirements if the data are available. If CISA is not available, for critical actions, use the higher of +3 FVA or 0.2PFA floodplain. If 0.2PFA data are not available, use +3 FVA. For non-critical actions, use the lower of FVA or 0.2PFA floodplain unless the 0.2PFA does not account for wave action. If 0.2PFA is not available use +2 FVA.
	Adds an exception to use of the FFRMS floodplain in limited situations involving national security and emergency actions.
	Clarification that the minimization standards required of 44 CFR §9.11 are applicable to all of FEMA's grant programs, not just grant programs authorized by the Disaster Relief Act of 1974.
Affected Population	The FFRMS elevation requirements will apply to those actions subject to the FFRMS in the applicable FFRMS floodplain. Grant recipients will be required to comply with the new standard by elevating or floodproofing projects located in the expanded FFRMS floodplain. Specific grant programs include IA, PA, and HMA. Using CISA as the primary approach, FEMA limited its dollar-valuation to the projects impacted in the first 10 years after the rule's effective date, FFRMS will impact the following number of structures: 1,154 PA projects, 1,924 IA projects, and 10,398 HMA projects, for a total of approximately 13,476 structure projects. FEMA also estimates FFRMS will impact the following number of facilities: 26,144 PA projects and 841 HMA projects, for a total of approximately 26,985 facility projects in years 1-10.
Transfers	<p>The majority of elevation and floodproofing costs will be funded by FEMA through several grant programs. Using CISA as the primary approach, FEMA estimates 13,476 affected PA, IA, and HMA structures. Discounted, the low estimate will be between \$104.7 million and \$86.2 million, using 3 and 7 percent respectively, with a 60-year transfer between \$3.8 million and \$6.1 million annually, at 3 and 7 percent respectively. Discounted, the high estimate will be between \$134.2 million and \$110.5 million, using 3 and 7 percent respectively, with a 60-year transfer between \$4.8 million and \$7.9 million annually, at 3 and 7 percent respectively. These transfer payments will occur in the first 10 years of the 60-year period because that is when the investment in those projects takes place.</p> <p>Not included in these estimates are the additional grants FEMA will provide, and additional costs recipients will incur for their portion of the cost share, for any of the elevation and floodproofing costs that FEMA is unable to monetize.</p>
Costs (quantitative)	Using CISA as the primary approach, FEMA estimates that this final rule will affect 13,476 PA, IA, and HMA structures. Discounted, the low estimate cost for these projects will be between \$134.0 million and \$110.4 million, using 3 and 7 percent respectively, with a 60-year annualized cost between \$4.8 million and \$7.9 million, using 3 and 7 percent. Discounted, the high estimate cost for these projects will be between \$169.8 million and \$139.9 million, using 3 and 7 percent respectively, with a 60-year annualized cost between \$6.1 million and \$10.0 million, using 3 and 7 percent respectively. These

	costs include additional training for FEMA staff, time for FEMA staff to make FFRMS floodplain determinations, the time for FEMA staff to make floodplain determinations, as well as the cost for the additional elevation and floodproofing this rule would require. These costs will be incurred in the first 10 years of the 60-year period because that is when the investment in those projects takes place.
Costs (qualitative)	Diversion of projects out of the floodplain.
	Increase in resiliency standard for an estimated 26,985 affected facility projects over 10 years
	Additional costs for adding requirements to building with basements
	Lifecycle maintenance costs for floodproofing
	Project delays and forgone projects.
Benefits (quantitative)	FEMA is able to quantify benefits for a portion of projects affected by the rule. Using CISA as the primary approach, FEMA estimates that 1,154 PA structures will be subject to the FFRMS over the 10-year period after the rule’s publication. Assuming a 59-inch Sea Level Rise, FEMA estimates the present value benefits of one additional foot of freeboard for the 50-year useful life of projects undertaken in the first 10 years after the rule’s effective date. The low estimate ranges between \$56.1 million and \$46.2 million, discounted to the beginning of Year 1, at 3 and 7 percent respectively, with a 50-year annualized benefit of \$2.0 million and \$3.3 million, at 3 and 7 percent. The high estimate ranges between \$66.1 million and \$54.4 million, discounted to the beginning of Year 1 at 3 and 7 percent respectively, with a 50-year annualized benefit of \$2.4 million and \$3.9 million, at 3 and 7 percent respectively. These quantified benefits include avoided physical damage, avoided displacement, and avoided loss of function for the 1,154 PA projects estimated over the 50-year useful life of public buildings.
Benefits (qualitative)	Reduction in damage to properties and contents from future floods for approximately 12,322 IA and HMA structure projects and 26,985 PA and HMA facility projects, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding.

PA Projects

FEMA provides PA grants to public and certain non-profit entities for the rebuilding, replacement, or repair of public and non-profit structures and facilities damaged by disasters. PA projects that involve new construction, substantial improvement, or repairs to address substantial damage are affected by this rule. FEMA divides its PA work into categories A–G.³⁰⁸ Projects that get funding under PA Categories C (Roads and Bridges), D (Water Control Facilities), E (Public Buildings), F (Utilities), and G (Parks, Recreational Areas, and Other Facilities) are affected by this rule, but FEMA is only able to provide estimates of costs associated with Category E (Public Buildings). FEMA has adequate data to estimate the additional costs for structures subject to the FFRMS, so monetized impacts are only available for Category E projects. The remaining PA categories fund facilities that are not subject to the same elevation and floodproofing requirements as buildings.

44 CFR part 9 classifies projects as either structures or facilities. Under this

rule, a structure is a walled and roofed building, including mobile homes and gas or liquid storage tanks. Structures will be subject to freeboard requirements to floodproof or elevate to a certain level above the BFE. Freeboard is the additional height above the BFE to which the structure is floodproofed or elevated for the purpose of reducing the risk of flood damage.

In contrast, facilities are any human-made or human-placed item other than a structure, including roads, bridges, power lines, water control facilities, and other types of infrastructure. Facility mitigation measures are more varied and highly project-specific. For example, damage to roads during flood events can be caused by numerous events, such as erosion and scour, inundation by floodwater, or debris blockage. Likewise, the mitigation measures to address the damages can include a variety of approaches, such as installing low water crossings, increasing culvert size, installing a relief culvert, adding riprap to a road embankment, and many others.³⁰⁹

Due to the highly project-specific nature of facilities projects, and the numerous options available for making them resilient, FEMA cannot estimate the costs of improving flood resiliency of facilities. Where FEMA provides funding for facilities to complete new construction, substantial improvement, or repairs to address substantial damage, the projects must incorporate minimization measures that will consider the FFRMS flood elevation. However, floodproofing and elevation to a specific height may not be appropriate as a minimization measure for facilities, depending on the facility. FEMA cannot estimate the cost due to the variability of those measures, which may include a variety of approaches. Facilities that are already located in the 1 percent annual chance floodplain for non-critical actions or 0.2 percent annual chance floodplain for critical actions must take resilience measures under current regulations. Based on 2013–2022 data, FEMA estimates that about 1,036 Category C projects, 120 Category D projects, 208 Category F projects, and 314 Category G projects may be affected by the FFRMS each year.

For PA Category E projects, if the FVA is the only expansion option, FEMA estimates the final rule will affect 899 projects over the first 10 years. The costs

³⁰⁸ PA Category A-Debris Removal and Category B-Emergency Protective Measures do not fund building or repair of structures and are not subject to the FFRMS.

³⁰⁹ FEMA. “FEMA B–797 Hazard Mitigation Field Book: Roadways.” 2010. Available at https://www.fema.gov/sites/default/files/2020-07/b797_hazmit_handbook.pdf.

would be incurred in the first 10 years of the 60-year period because that is when the investment in those projects takes place. Accordingly, FEMA estimated that the average annual costs in years 1–10 will range between \$4.3 million and \$5.5 million. The average Federal cost share for PA projects from 2013–2022 was 85.0 percent. Accordingly, FEMA estimates that it will cover 85.0 percent of the cost to elevate or floodproof PA projects, for a total of between \$3.6 million and \$4.7 million in additional grants per year for the first 10 years. Grant recipients will bear the remaining cost of between \$0.6 million and \$0.8 million per year for the first 10 years.

For PA Category E projects, if 0.2PFA is the only expansion option, FEMA estimates the final rule will affect 688 projects over the first 10 years. Because these costs are incurred in the first 10 years, FEMA estimated the average annual costs in years 1–10 will range between \$2.5 million and \$3.2 million. Using the historical average 85.0 percent Federal cost share, FEMA estimates that it will cover 85.0 percent of the cost to elevate or floodproof PA projects, for a total of between \$2.1 million and \$2.8 million in additional grants per year for the first 10 years. Grant recipients will bear the remaining costs of approximately \$0.4 million and \$0.5 million per year for the first 10 years.

For PA Category E projects, if CISA is the only expansion option, FEMA estimates the final rule will affect 1,154 projects over the first 10 years. Because these costs are incurred in the first 10 years, FEMA estimated the average annual costs in years 1–10 will range between \$10.4 million and \$14.5 million. Using the historical average 85.0 percent Federal cost share, FEMA estimates that it will cover 85.0 percent of the cost to elevate or floodproof PA projects, for a total of between \$8.9 million and \$12.3 million in additional grants per year for the first 10 years. Grant recipients will bear the remaining cost of between \$1.6 million to \$2.2 million per year for the first 10 years.

Table 6: Summary of FFRMS PA Category E Annual Project Costs and Distributional Impacts by Approach

		FVA	0.2PFA	CISA
Low Estimate	Annual cost (Years 1-10)	\$4,272,069	\$2,474,052	\$10,434,180
	FEMA’s portion (grants from FEMA to recipients)	\$3,631,259	\$2,102,944	\$8,869,053
	Recipients’ portion	\$640,810	\$371,108	\$1,565,127
High Estimate	Annual cost (Years 1-10)	\$5,549,873	\$3,241,488	\$14,497,988
	FEMA’s portion (grants from FEMA to recipients)	\$4,717,392	\$2,755,265	\$12,323,290
	Recipients’ portion	\$832,481	\$486,223	\$2,174,698
Unquantified	Increase in resiliency standard for structures that would affect an estimated 1,036 Category C projects, 120 Category D projects, 208 Category F projects, and 314 Category G projects per year.			

IA Projects

Individual Assistance (IA) grants are provided to individuals who, as a direct result of a disaster, have necessary expenses and serious needs that they are unable to meet through other means. IA funding is divided into Housing Assistance and Other Needs Assistance. Other Needs Assistance under IA provides financial assistance for medical, dental, childcare, funeral, personal property, transportation, or other necessary expenses or serious needs and is not subject to FFRMS requirements. Under Housing Assistance, FEMA may provide temporary housing assistance (financial assistance or direct assistance in the form of temporary housing units), a capped amount of financial assistance for the repair or replacement of disaster-damaged private residences; and, in rare circumstances, financial or direct assistance to construct permanent or semi-permanent housing.

The financial caps on housing repair or replacement assistance means IA grants do not generally fund new construction or substantial improvements. However, two types of

IA grants are affected by the final rule: IA Permanent Housing Construction (PHC) projects, and sales and disposal of temporary housing units (THUs). PHC is Federal assistance that FEMA provides under IA for the purpose of constructing permanent housing where alternative housing resources are unavailable or scarce. IA also includes the sale and disposal of THUs such as mobile housing units and recreational vehicles; THUs located in the FFRMS floodplain will be subject to the requirements of this rule. FEMA regulations prohibit the floodproofing of residential structures at or below the BFE, and so elevation is the only option.³¹⁰

FEMA has calculated the cost of elevating PHC structures, depending on FFRMS approach and location and type of project.³¹¹ FEMA then subtracted

³¹⁰ See 44 CFR 60.3.

See also Floodproofing. FEMA. Available at: <https://www.fema.gov/glossary/floodproofing>. Last accessed: January 11, 2023.

³¹¹ Projects outside of the 1 percent annual chance floodplain, but below the required level will need to be elevated to the required level. These projects require elevations of different levels, depending on the structure’s current elevation. FEMA assumes that half of the projects will need

certain costs that it determined to be part of the baseline. Specifically, numerous States and localities have existing freeboard requirements that will result in elevation costs and benefits regardless of this rule, so costs and benefits for these areas have been reduced based on existing requirements.

For IA, if the FVA is the only expansion option, FEMA estimates that the final rule will affect 1,434 structures over the first 10 years. These costs would be incurred in the first 10 years of the 60-year period because that is when the investment in those projects takes place. Accordingly, FEMA estimates average annual costs of \$57,343 in years 1–10. Since there is no cost share for IA, FEMA will fund the entire cost of elevating IA projects through grants.

For IA, if the 0.2PFA is the only expansion option, FEMA estimates that the final rule will affect 1,434 structures

to be elevated 1-ft and the other half or projects will need to be elevated 2-ft. This assumption was made because FEMA is unsure of the actual number of projects that will need to be elevated by 1-ft or 2-ft and so assumed that it will be an even proportion for each height. IA projects is all considered non-critical actions and will not require a 3-ft level.

over the first 10 years. Because these costs would be incurred in the first 10 years of the analysis, FEMA estimates the average annual cost in years 1–10 is \$57,343. Since there is no cost share for IA, FEMA will fund the entire cost of elevating IA projects through grants.

For IA, if the CISA is the only expansion option, FEMA estimates that the final rule will affect 1,924 projects over the first 10 years.³¹² Because these costs would be incurred in the first 10 years of the analysis, FEMA estimates that the average annual cost in years 1–

10 is \$168,174. Since there is no cost share for IA, FEMA will fund the entire cost of elevating IA projects through grants.

Table 7: Summary of FFRMS IA Annual Project Costs and Distributional Impacts by Approach

	FVA	0.2PFA	CISA
Annual cost (Years 1-10)	\$57,343	\$57,343	\$168,174
FEMA’s portion (grants from FEMA to recipients)	\$57,343	\$57,343	\$168,174
Recipients’ portion	\$0	\$0	\$0

HMA Projects

FEMA provides Hazard Mitigation Assistance (HMA) grants to States, territories, Federally-recognized Tribes, and local communities for the implementation of hazard mitigation measures to increase resiliency to disasters. Hazard mitigation is defined as any action taken to reduce or eliminate long-term risk to people and property from natural hazards. HMA projects related to flood mitigation mainly include elevation of structures, floodproofing of structures, and acquisition of properties that are at a high risk of damage from flooding. HMA also funds various other types of projects such as minor flood control, property acquisition, and generators, but FEMA is unable to estimate the potential costs associated with these projects because the manner in which each applicant meets the resiliency standards will be fact-specific and dependent upon the nature of the design and purpose of the project. HMA grant program includes Hazard Mitigation Grant Program (HMGP), HMGP Post Fire, Pre-Disaster Mitigation (PDM), Building Resilient Infrastructure and Communities (BRIC), and Flood

Mitigation Assistance (FMA). Between 2010 and 2019, FEMA funded a total of 841 minor flood control and generators projects, for an average of 84 such projects per year. Additional minor mitigation measures will have to be taken for these projects, if located in the expanded FFRMS floodplain.

FEMA used data from HMA grant approvals for projects that include the elevation or floodproofing of structures from 2010–2019 and a multi-step process to estimate the range of costs for elevating or floodproofing these structures to the FFRMS.

For HMA, if the FVA is the only expansion option, FEMA estimated the final rule will affect 7,755 structures over the first 10 years. These costs would be incurred in the first 10 years of the 60-year period because that is when the investment in those projects would take place. Accordingly, FEMA estimates average annual costs in years 1–10 of \$1.8 million. Using the 75 percent Federal cost share, FEMA estimates that it will cover 75 percent of the cost to elevate or floodproof HMA projects, for a total of \$1.4 million in additional grants per year in years 1–10. Grant recipients will bear the remaining cost of \$0.5 million per year.

For HMA, if the 0.2PFA is the only expansion option, FEMA estimated that the final rule will affect 7,712 structures in the first 10 years. Because these costs would be incurred in the first 10 years of the analysis, FEMA estimates the average annual cost in years 1–10 will be \$1.8 million. Using the 75 percent Federal cost share, FEMA estimates that it will cover 75 percent of the cost to elevate or floodproof HMA projects, for a total of \$1.4 million in additional grants per year in years 1–10. Grant recipients will bear the remaining cost of \$0.5 million per year.

For HMA, if the CISA is the only expansion option, FEMA estimated that the final rule will affect 10,398 structures over the first 10 years. Because these costs would be incurred in the first 10 years, FEMA estimates that the average annual cost in years 1–10 is \$4.3 million. Using the 75 percent Federal cost share, FEMA estimates that it will cover 75 percent of the cost to elevate or floodproof HMA projects, for a total of \$3.2 million in additional grants per year. Grant recipients will bear the remaining cost of \$1.1 million per year.

Table 8: Summary of FFRMS HMA Structure Annual Project Costs and Distributional Impacts by Approach

	FVA	0.2PFA	CISA	
Quantified Estimates	Annual cost (Years 1-10)	\$1,848,298	\$1,809,364	\$4,319,206
	FEMA’s portion (grants from FEMA to recipients)	\$1,386,224	\$1,357,023	\$3,239,406
	Recipients’ portion	\$462,074	\$452,341	\$1,079,802
Unquantified	Increase in resiliency standard for an estimated 84 minor flood controls and generators projects per year			

³¹² For analysis purposes, FEMA calculated the expanded floodplain using the mid-point (and rounded down) to +5-ft CISA which would expand

the floodplain by 26 percent. FEMA opted for the mid-point for CISA because this is the best approach with available data. Please see further

explanation in the appropriate CISA sections: 7.4.3, 7.5.3, and 7.6.3.

Need for Regulation

Executive Order 11988, as amended, requires agencies to improve the resilience of communities and Federal assets against the impacts of flooding. The FFRMS is a flood resilience standard that provides a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains and wetlands. Incorporating the FFRMS ensures FEMA expands flood risk management from the current base flood elevation to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk and ensure that projects funded with taxpayer dollars last as long as intended.

Affected Population

The affected population is FEMA grant recipients whose projects are located in the current and the expanded FFRMS floodplain. Grant recipients will be required to comply with the new standard by elevating or floodproofing projects located in the expanded FFRMS floodplain. Specific grant programs include PA, IA, and HMA. PA grant recipients include public and certain non-profit entities, IA grant recipients include individuals, and HMA grant recipients include States, territories, Federally-recognized Tribes, and local communities.

The implementation of the FFRMS will have negligible impacts on community property values, tax bases and the distribution of real income. Additionally, FEMA expects the impacts on affordable housing for low to moderate income households and disadvantaged communities to be minimal since most actions subject to FFRMS requirements are non-residential. FEMA only funds residential construction in the IA and HMA programs; FEMA funds 153 residential IA projects and 268 HMA residential projects per year on average.

Baseline

Under current FEMA regulations set out in 44 CFR part 9, the base floodplain is defined as the 100-year floodplain (1 percent annual chance), or for critical actions, defined as the 500-year floodplain (0.2 percent annual chance). New construction or substantial improvement of structures located in the base floodplain must be elevated to or above the 1 percent annual chance flood level or Base Flood Elevation (BFE) or floodproofed below the BFE. Critical actions located within either the 1 percent annual chance floodplain or the 0.2 percent annual chance floodplain must be elevated or

floodproofed up to the corresponding elevation for the 0.2 percent annual chance floodplain where it is mapped.³¹³

FEMA has interim policies for PA and HMA that partially implement FFRMS and ASCE 24 standards in some areas, discussed in further detail below. Depending on the criticality of the action, these programs apply the supplemental FFRMS policy either to the base floodplain, or to both the 100-year and 500-year floodplains for critical actions. At the time the NPRM RIA was conducted, these partial implementation policies had been in place for less than 2 years. These policies were issued as temporary, partial implementation of the FFRMS until FEMA could implement it through this rulemaking. FEMA conducted this Regulatory Impact Analysis against a pre-statutory baseline to capture the economic impacts of the FFRMS and more accurately to measure the impacts of the rule against the world without the interim PA and HMA policies. Likewise, data on projects that adhered to the ASCE 24 standards is not available. Accordingly, FEMA used a pre-guidance baseline for this final rule to measure the impacts of the rule against the world without these policies and in accordance with the current requirements of 44 CFR part 9.

PA Interim Policy

The June 3, 2022 PA interim partial implementation policy³¹⁴ provides elevation requirements for critical and non-critical actions involving structures located in a designated floodplain. The policy established requirements for elevating and floodproofing structures funded under the PA program. The interim policy set forth principles at its issuance that ensure that communities affected by future flooding are less vulnerable to losses of life and property, that investment of PA program funds for projects in the floodplain are spent to protect structures from flood risk, that structures are elevated or floodproofed

³¹³ FEMA's project level data for IA, PA, and HMA delineate whether projects are in the Special Flood Hazard Area (1 percent annual chance floodplain) but do not show whether they are in the 0.2 percent chance floodplain. For critical actions, FEMA was unable to determine the baseline number of critical actions that are located in the 0.2 percent chance floodplain. Regardless of which floodplain the project is in, a critical action must be elevated at or above the 0.2 percent annual chance flood level.

³¹⁴ Partial Implementation of the Federal Flood Risk Management Standard for Public Assistance (Interim). FEMA Policy 104-22-0003. Available at: https://www.fema.gov/sites/default/files/documents/fema_fp-104-22-0003-partial-implementation-ffrms-pa-interim.pdf. Last accessed: July 20, 2022.

to address current and future flood risk, and that the policy is implemented in a consistent and equitable manner.

This policy is being applied to structures (walled or roofed buildings, including mobile homes and gas or liquid storage tanks) in a mapped or established 1 percent annual chance floodplain or 0.2 percent annual chance floodplain³¹⁵ that have a substantial damage³¹⁶ determination, require substantial improvement,³¹⁷ or involve new construction.³¹⁸ This applies regardless of the cause of damage.

HMA Interim Policy

The August 26, 2021 HMA interim partial implementation policy³¹⁹ sets forth the elevation requirements for the use of FEMA HMA for non-critical actions involving structure elevation, dry floodproofing, and mitigation reconstruction projects in the 1 percent annual chance floodplain.^{320 321}

³¹⁵ Under 44 CFR 9.4, Floodplain means the “lowland and relatively flat areas adjoining inland and coastal waters including, at a minimum, that area subject to a one percent or greater chance of flooding in any given year. Wherever in this regulation the term floodplain is used, if a critical action is involved, floodplain shall mean the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year (500-year floodplain). Floodplain does not include areas subject only to midflow until FIA adopts maps identifying M Zones.”

³¹⁶ Under 44 CFR 59.1, Substantial Damage means “damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.”

³¹⁷ Under 44 CFR 9.4, Substantial Improvement means “any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the market value of the structure or replacement cost of the facility (including all public facilities as defined in the Disaster Relief Act of 1974) (a) before the repair or improvement is started, or (b) if the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is an essential link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of the portion of the system which is operationally dependent on the facility. The term substantial improvement does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.”

³¹⁸ Under 44 CFR 9.4, New Construction means “the construction of a new structure (including the placement of a mobile home) or facility or the replacement of a structure or facility which has been totally destroyed.”

³¹⁹ Partial Implementation of the Federal Flood Risk Management Standard for Hazard Mitigation Assistance Programs (Interim). FEMA Policy FP-206-21-0003. Available at: https://www.fema.gov/sites/default/files/documents/fema_policy-fp-206-21-0003-partial-implementation-ffrms-hma-programs-interim.pdf. Last accessed: July 20, 2022.

³²⁰ FEMA implemented an update to the HMA interim policy on December 2022. This updated interim policy provides updated elevation

The updated HMA interim policy,³²² which supersedes the initial HMA interim policy, provides elevation requirements for critical and non-critical actions involving structures (as defined in 44 CFR 9.4) located in a designated floodplain. This updated interim policy covers the additional flexibility for non-critical actions to select the lower of the 0.2PFA or +2-ft above the BFE and setting elevation requirements for critical actions involving structures.

By partially implementing the FFRMS and requiring a higher vertical flood elevation for certain non-critical actions, FEMA is helping to ensure that communities affected by future flood disasters are less vulnerable to losses of life and property. This policy purpose is to improve the resilience of non-critical actions involving structure elevation, dry floodproofing, and mitigation reconstruction projects located in the SFHA against the impacts of flooding, which are anticipated to increase over time due to changing conditions and

requirements for critical and non-critical actions involving structures as defined in 44 CFR part 9.4 located in a designated floodplain. The updated interim policy also provides updated requirements for elevating and floodproofing structures funded under HMA programs. The RIA does not address the changes in the updated HMA interim policy.

³²¹ The 1 percent annual chance floodplain is currently also defined as the Special Flood Hazard Area under the NFIP.

³²² Partial Implementation of the Federal Flood Risk Management Standard for Hazard Mitigation Assistance Programs. FEMA Policy 206–21–003–0001. Available at: https://www.fema.gov/sites/default/files/documents/fema_policy-fp-206-21-003-0001-implementation-ffrms-hma-program_122022.pdf. Last accessed: December 30, 2022.

other threats; and to ensure such projects will last as long as intended.

Total Costs

This final rule will increase costs for certain IA, PA, and HMA program projects, as well as result in administrative costs for FEMA. FEMA expects minimal effects on grants processed by FEMA's GPD because these programs involve grants for preparedness activities and generally do not fund new construction or substantial improvement projects. Future FEMA facilities that may be located within the FFRMS floodplain will also be subject to the requirements of the final rule.

FEMA is unable to quantify the cost for increased resiliency standards for the 26,985 facility projects estimated to be affected in the first 10 years after this rule's publication. Additionally, FEMA is unable to quantify the cost for projects that may be diverted out of the floodplain, impacts to projects with existing basements, project delays, or forgone projects that may result from this rule.

Using the CISA as the primary approach, FEMA estimates that the final rule will affect 13,476 PA, IA, and HMA structures over the first 10 years. Those costs are incurred in the first 10 years of the 60-year period because that is when the investment in those projects takes place.³²³ Discounted over 60

³²³ FEMA limited its dollar-valuation to the projects impacted in the first 10 years after the rule's effective date. FEMA has considered the resulting costs, benefits, and transfer payments of the final rule on those projects over a 50-year period, for a total of 60 years. The costs and

years, the low estimate³²⁴ cost is between \$134.0 million and \$110.4 million, using 3 and 7 percent respectively, with a 60-year annualized cost of \$4.8 million and \$7.9 million, using 3 and 7 percent respectively (see Table 9). Discounted over 60 years, the high estimate cost is between \$169.8 million and \$139.9 million, using 3 and 7 percent respectively, with a 60-year annualized cost of \$6.1 million and \$10.0 million, using 3 and 7 percent (see Table 10). Monetized costs include additional training for FEMA staff as well as the cost for the additional elevation or floodproofing. FEMA is unable to quantify the cost for increased resiliency standards for an estimated 26,985 affected facility projects over the 10-year period of analysis. Additionally, FEMA is unable to quantify the cost for projects that may be diverted out of the floodplain, impacts to projects with existing basements, project delays, or forgone projects that may result from this rule.

transfers occur in the first 10 years of the 60-year period because that is when the initial investment to elevate or floodproof them to meet the FFRMS requirements takes place. This is an upfront cost that occurs when the project is constructed. However, the benefits of the final rule are realized over the 50-year useful life of the affected structures.

³²⁴ FEMA has created a range for the administrative costs: between if all projects used the FFSST (low estimate) and if all used the Job Aid (high estimate). FEMA acknowledges that there may be situations where a combination of the FFSST and Job Aid may be used. However, FEMA was unable to estimate how many would use the FFSST and how many would use the Job Aid since the FFSST is currently being improved. In reality, the administrative costs will likely fall somewhere within the low and high estimates.

Table 9: Primary Approach (CISA) Estimated Costs over the 60-Year Period of Analysis (Low Estimate, 2022\$)

Year	FEMA Admin Costs	Elevation and Floodproofing Costs	Undiscounted annual costs	Annual costs discounted at 3%	Annual costs discounted at 7%
1	\$1,442,218	\$14,921,562	\$16,363,780	\$15,887,165	\$15,293,252
2	\$701,177	\$14,921,562	\$15,622,739	\$14,725,930	\$13,645,505
3	\$701,177	\$14,921,562	\$15,622,739	\$14,297,019	\$12,752,809
4	\$701,177	\$14,921,562	\$15,622,739	\$13,880,601	\$11,918,513
5	\$701,177	\$14,921,562	\$15,622,739	\$13,476,312	\$11,138,797
6	\$701,177	\$14,921,562	\$15,622,739	\$13,083,798	\$10,410,091
7	\$701,177	\$14,921,562	\$15,622,739	\$12,702,716	\$9,729,057
8	\$701,177	\$14,921,562	\$15,622,739	\$12,332,734	\$9,092,576
9	\$701,177	\$14,921,562	\$15,622,739	\$11,973,529	\$8,497,735
10	\$701,177	\$14,921,562	\$15,622,739	\$11,624,785	\$7,941,808
11-60*	\$0	\$0	\$0	\$0	\$0
Total				\$133,984,589	\$110,420,143
Annualized				\$4,841,260	\$7,865,141

* After year 10, this final rule will continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage, but FEMA has chosen to limit the analysis to 10 years of affected structures because FEMA believes the number of structures affected in this 10-year period is enough to provide a reasonable estimate of the costs, benefits, and transfers resulting from the final rule. Accordingly, FEMA’s analysis focuses on the 50-year impacts of the rule on projects that take place in the initial 10-year period, for a total period of analysis spanning 60 years.

Table 10: Primary Approach (CISA) Estimated Costs over the 60-Year Period of Analysis (High Estimate, 2022\$)

Year	FEMA Admin Costs	Elevation and Floodproofing Costs	Undiscounted annual costs	Annual costs discounted at 3%	Annual costs discounted at 7%
1	\$1,576,243	\$18,985,370	\$20,561,613	\$19,962,731	\$19,216,461
2	\$835,202	\$18,985,370	\$19,820,572	\$18,682,790	\$17,312,055
3	\$835,202	\$18,985,370	\$19,820,572	\$18,138,631	\$16,179,491
4	\$835,202	\$18,985,370	\$19,820,572	\$17,610,322	\$15,121,019
5	\$835,202	\$18,985,370	\$19,820,572	\$17,097,400	\$14,131,794
6	\$835,202	\$18,985,370	\$19,820,572	\$16,599,417	\$13,207,284
7	\$835,202	\$18,985,370	\$19,820,572	\$16,115,939	\$12,343,256
8	\$835,202	\$18,985,370	\$19,820,572	\$15,646,543	\$11,535,753
9	\$835,202	\$18,985,370	\$19,820,572	\$15,190,818	\$10,781,078
10	\$835,202	\$18,985,370	\$19,820,572	\$14,748,367	\$10,075,774
11-60*	\$0	\$0	\$0	\$0	\$0
Total				\$169,792,958	\$139,903,965
Annualized				\$6,135,122	\$9,965,251

* After year 10, the final rule will continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage, but FEMA has chosen to limit the analysis to 10 years of affected structures because it believes that the number of structures affected in this 10-year period is enough to provide a reasonable estimate of the costs, benefits, and transfers resulting from the final rule. Accordingly, FEMA’s analysis focuses on the 50-year impacts of the rule on projects that take place in the initial 10-year period, for a total period of analysis spanning 60 years.

Total Benefits

FEMA believes that the benefits of the final rule will justify the costs. FEMA has identified qualitative benefits, including reductions in damage to properties and contents from future floods, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding. FEMA has also analyzed

quantified benefits of one additional foot of freeboard for PA projects using the CISA.

This final rule will result in savings in time and money from a reduced recovery period after a flood, as well as the increased safety of individuals. Generally, if properties are protected, there will be less damage, resulting in less recovery time. In addition, higher elevations will help to protect people, leading to increased safety. FEMA is

unable to quantify these benefits but discusses them qualitatively in the Regulatory Impact Analysis.

In support of these benefits, FEMA is using the 2022 Benefits Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains³²⁵ (2022

³²⁵ A Benefits Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains. FEMA. Draft, July 2022.

report) that analyzed potential benefits (such as a reduction in damages, displacement, and loss of function, from increased flood protection requirements for public and nonresidential use buildings located in riverine and coastal SFHAs). This report's scope included six construction methods in coastal and riverine areas: Elementary School 1-Story, Hospital 2–3 Stories, Police Station 2-Stories, Office Building (Business) 1-Story, Office Building (Business) 3-Story, and Office Building (Government office) 1-Story. The riverine analysis considered locations along 14 rivers, while the coastal analysis considered 12 different locations along a hypothetical coastal transect; both only considered scenarios based on future conditions.

Future conditions for the riverine analysis included two climate change scenarios: the Representative Concentration Pathways (RCP) 4.5 scenario and the RCP 8.5 scenario that represent various efforts to curb future emissions.³²⁶ The study used these two climate change scenarios to evaluate the amount of increase or decrease in riverine flood elevations over the next 50 years. For the coastal analysis, the study included the impact of various sea level rise conditions in areas with wave heights less than 1.5-ft (flood zones A) that are subject to coastal storm surge. The sea level rise conditions replicated a 2016 evaluation considering 8-, 20-, 39- and 59-inch sea level rises by 2100. FEMA has evaluated benefits associated with the rule using both RCP 4.5 and 8.5 scenarios, and three of the four sea level rise conditions: 8-, 39-, and 59-inches.

Available at: <https://www.regulations.gov/document/FEMA-2023-0026-0003>. Last accessed: March 22, 2024.

³²⁶ Representative Concentration Pathways (RCP) are projected future emissions and concentration trajectories for climate change models that account for the increase in greenhouse gas, aerosol, and chemically active gas emissions. According to the Environmental Protection Agency, they define RCP as the following. RCP 4.5: This scenario assumes a stabilization in GHG emissions shortly after 2100. RCP 8.5: This scenario is characterized by increasing GHG emissions over time, and factors in the highest GHG concentration levels of all the scenarios by 2100.

Changes Over Time. EPA. Available at: <https://www.epa.gov/enviroatlas/changes-over-time>. Last accessed: December 1, 2023.

The 2022 report used FEMA's BCA Toolkit to calculate benefits for each year between 2023 and 2072 and then used these projections to calculate the present value benefits for each scenario.³²⁷ The Toolkit used standard depth-damage functions (curves) to estimate damages from inundation and to calculate the benefits of mitigation that included avoided physical damage, avoided displacement (costs incurred while staying in a temporary location following an event), and avoided loss of function (the economic impact to a community due to a lack of critical services). The study also considered the potential avoided losses (or benefits) associated with either dry floodproofing or elevation of nonresidential and public use buildings.³²⁸ It compared existing freeboard requirements against one additional foot of freeboard; that is, the study evaluated the benefits of elevating or floodproofing to the BFE+2 from a current assumed height of BFE+1 for non-critical actions and to BFE+3 from a current assumed height of BFE+2 for critical actions.

According to this report, for critical facilities in coastal SFHAs, such as police stations and hospitals, inclusion of one additional foot of freeboard will provide increased protection and continuity of operations and result in a quantifiable benefit. Elevating buildings would help to maintain community resiliency farther into the future. The riverine analysis indicated that despite the large variation in the flood data for the 14 sites, inclusion of one additional foot of freeboard would result in quantifiable average benefits. Critical actions and schools had the highest benefits across various riverine locations.

FEMA has used this study to estimate the benefits of an additional foot of freeboard for non-residential PA

³²⁷ FEMA developed the BCA Toolkit to perform an analysis of cost-effectiveness of mitigation projects. The BCA Toolkit uses Office of Management and Budget cost-effectiveness guidelines and FEMA-approved methodologies and tools to complete a benefit-cost analysis. The tool can be found here: <https://www.fema.gov/grants/tools/benefit-cost-analysis#toolkit>.

³²⁸ 2016 Evaluation of the Benefits of Freeboard for Public and Nonresidential Buildings in Coastal Areas. <https://www.regulations.gov/document/FEMA-2015-0006-0379>. Page 4.

projects. FEMA was unable to use the benefits study to estimate the benefits for HMA and IA projects, since HMA data cannot be broken out by building types and IA data is limited to residential-related projects.

For FEMA's primary estimate, FEMA used 59 inches of SLR due to it being the closest SLR option to the vertical rise in FEMA's +5-ft assumption for CISA. CISA is the preferred approach for the FFRMS if the data are available. Since 5 feet is equivalent to 60 inches (5 × 12 inches per foot), 59-inch SLR is the closest SLR option that FEMA had available for this portion of the analysis. Using CISA for all PA Category E projects that are subject to the FFRMS, with the assumption that there would be a 59-inch SLR, FEMA estimates that the present value benefits of one additional foot of freeboard for the 50-year useful life of 1,154 PA Category E projects undertaken during the first 10 years after the rule's effective date will be between \$56.1 million and \$46.2 million (low estimate), discounted at 3 and 7 percent respectively, with a 60-year annualized benefit of \$2.0 million and \$3.3 million, at 3 and 7 percent (See Table 11) and between \$66.1 million and \$54.4 million (high estimate), discounted at 3 and 7 percent respectively, with a 60-year annualized benefit of \$2.4 million and \$3.9 million, at 3 and 7 percent. (See Table 12).

Tables 11 and 12 show the number of projects constructed each year (column 2), the present value of the benefits as of the year in which they were constructed (column 3), and the present value of the benefits as of the beginning of Year 1, using a 3 percent and 7 percent discount rate (columns 3 and 4, respectively). For example, the benefits shown in Year 1 represent the present value of the benefits for the 115 Category E projects constructed in Year 1 over their 50-year useful life (*i.e.*, in Years 1–50 of the analysis). The analysis does not account for any benefits for Year 1 projects after their 50-year useful life. The benefits shown in Year 10 represent the present value of the benefits for projects constructed in Year 10 over their 50-year useful life, (*i.e.*, in Years 11–60 of the analysis).

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Table 11: Primary Approach (CISA) Estimated 50-Year Benefits for PA Category E Projects Undertaken During Years 1-10 (Low Estimate, 2022\$)

Year	Number of PA Category E Projects	Total 50-Year Benefit for Projects Constructed in Each Year*	Discounted 3%	Discounted 7%
1	115	\$6,581,729	\$6,390,028	\$6,151,149
2	115	\$6,581,729	\$6,203,911	\$5,748,737
3	115	\$6,581,729	\$6,023,214	\$5,372,651
4	115	\$6,581,729	\$5,847,781	\$5,021,170
5	115	\$6,581,729	\$5,677,457	\$4,692,682
6	115	\$6,581,729	\$5,512,094	\$4,385,684
7	115	\$6,581,729	\$5,351,548	\$4,098,770
8	115	\$6,581,729	\$5,195,678	\$3,830,626
9	115	\$6,581,729	\$5,044,347	\$3,580,024
10	115	\$6,581,729	\$4,897,424	\$3,345,817
60-Year Total*			\$56,143,482	\$46,227,310
Annualized**			\$2,028,630	\$3,292,735

* The benefits in this column represent the present value of the benefits for structures constructed in that year over their 50-year useful life, as of the year in which they were constructed.

** The total benefits represent the total present value of benefits as of the beginning of Year 1.

Table 12: Primary Approach (CISA) Estimated 50-Year Benefits for PA Category E Projects Undertaken During Years 1-10 (High Estimate, 2022\$)

Year	Number of PA Category E Projects	Total 50-Year Benefit for Projects Constructed in Each Year*	Discounted 3%	Discounted 7%
1	115	\$7,750,655	\$7,524,908	\$7,243,603
2	115	\$7,750,655	\$7,305,736	\$6,769,722
3	115	\$7,750,655	\$7,092,947	\$6,326,843
4	115	\$7,750,655	\$6,886,357	\$5,912,938
5	115	\$7,750,655	\$6,685,783	\$5,526,110
6	115	\$7,750,655	\$6,491,052	\$5,164,589
7	115	\$7,750,655	\$6,301,992	\$4,826,718
8	115	\$7,750,655	\$6,118,439	\$4,510,952
9	115	\$7,750,655	\$5,940,232	\$4,215,843
10	115	\$7,750,655	\$5,767,215	\$3,940,040
60-Year Total*			\$66,114,661	\$54,437,358
Annualized**			\$2,388,918	\$3,877,531

* The benefits in this column represent the present value of the benefits for structures constructed in that year over their 50-year useful life, as of the year in which they were constructed.

** Annualized over the 60-year period of analysis.

Total Transfer Payments

Because the cost to implement the FFRMS mitigation measures will be shared between FEMA and grant recipients according to the statutory cost share, there are also important distributional impacts. The majority of elevation and floodproofing costs will be borne by FEMA through additional grants (a transfer from FEMA to grant

recipients). Grant recipients will bear the remaining cost. The below section shows the additional transfers from FEMA to grant recipients. Using CISA as the primary approach, FEMA estimates that this final rule will affect 13,476 structures in the first 10 years resulting in an increase in transfer payments (*i.e.*, grants) over the 60-year period of analysis. FEMA's low estimate of the increase in transfer payments is between

\$104.7 million and \$86.2 million, with a 60-year transfer between \$3.8 million and \$6.1 million annually, at 3 and 7 percent respectively (see Table 13). FEMA's high estimate of the increase in transfer payments is between \$134.2 million and \$110.5 million, with a 60-year transfer between \$4.8 million and \$7.9 million annually, at 3 and 7 percent discount rates, respectively (see Table 14).

Table 13: Primary Approach (CISA) Estimated Transfers over the 60-Year Period of Analysis (Low Estimate, 2022S)

Year	Transfers from FEMA to Recipients	Total transfers discounted at 3%	Total transfers discounted at 7%
1	\$12,276,633	\$11,919,061	\$11,473,489
2	\$12,276,633	\$11,571,904	\$10,722,887
3	\$12,276,633	\$11,234,858	\$10,021,389
4	\$12,276,633	\$10,907,629	\$9,365,785
5	\$12,276,633	\$10,589,931	\$8,753,070
6	\$12,276,633	\$10,281,487	\$8,180,439
7	\$12,276,633	\$9,982,026	\$7,645,270
8	\$12,276,633	\$9,691,287	\$7,145,112
9	\$12,276,633	\$9,409,017	\$6,677,675
10	\$12,276,633	\$9,134,968	\$6,240,818
11-60*	\$0	\$0	\$0
Total		\$104,722,168	\$86,225,934
Annualized		\$3,783,922	\$6,141,806

* After year 10, the final rule will continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage, but FEMA has chosen to limit the analysis to 10 years of affected structures because FEMA believes the number of structures affected in this 10-year period is enough to provide a reasonable estimate of the costs, benefits, and transfers resulting from the final rule. Accordingly, FEMA's analysis focuses on the 50-year impacts of the rule on projects that take place in the initial 10-year period, for a total period of analysis spanning 60 years.

Table 14: Primary Approach (CISA) Estimated Transfers over the 60-Year Period of Analysis (High Estimate, 2022S)

Year	Transfers from FEMA to Recipients	Total transfers discounted at 3%	Total Transfers discounted at 7%
1	\$15,730,870	\$15,272,689	\$14,701,748
2	\$15,730,870	\$14,827,854	\$13,739,951
3	\$15,730,870	\$14,395,974	\$12,841,076
4	\$15,730,870	\$13,976,674	\$12,001,005
5	\$15,730,870	\$13,569,587	\$11,215,893
6	\$15,730,870	\$13,174,356	\$10,482,143
7	\$15,730,870	\$12,790,637	\$9,796,395
8	\$15,730,870	\$12,418,094	\$9,155,510
9	\$15,730,870	\$12,056,402	\$8,556,551
10	\$15,730,870	\$11,705,245	\$7,996,777
11-60*	\$0	\$0	\$0
Total		\$134,187,512	\$110,487,049
Annualized		\$4,848,592	\$7,869,907

* After year 10, the final rule will continue to impact FEMA projects funding new construction, substantial improvements or repairs to fix substantial damage, but FEMA has chosen to limit the analysis to 10 years of affected structures because FEMA believes the number of structures affected in this 10-year period is enough to provide a reasonable estimate of the costs, benefits, and transfers resulting from the final rule. Accordingly, FEMA's analysis focuses on the 50-year impacts of the rule on projects that take place in the initial 10-year period, for a total period of analysis spanning 60 years.

In Tables 15 and 16, FEMA presents the cost, transfer payments and benefit estimates by FFRMS approach. FEMA also presents estimates of costs, transfers, and benefits by grant program for CISA, FEMA's primary approach. The administrative cost estimate is not broken down by grant program because much of the cost will exist regardless of the program. Quantitative estimates of benefits are only available for projects under PA category E (Public Buildings). Due to the highly project-specific nature of facilities projects, and the numerous

options for making them resilient, FEMA cannot estimate the costs of improving flood resiliency of facilities.³²⁹ Tables 15 and 16 show that the total 60-year benefits for non-residential PA Category E projects constructed in the first 10 years is \$54.4 million (7 percent, high). This benefit is for adding one foot of freeboard,

³²⁹ Category E projects are public buildings and contents. See "Public Assistance Program and Policy Guide" Page 51, at https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf.

assuming a 59-inch SLR. Although the cost for residential and non-residential PA Category E projects is \$133.3 million (7 percent, high), this cost represents 5 feet of freeboard (FEMA's assumption for CISA).³³⁰ FEMA does not have data to quantify the benefits of additional freeboard, and thus the quantified benefits represent only a portion of the

³³⁰ Costs for the FVA may be a better comparison because they represent 2 or 3 feet of freeboard, depending on criticality. However, the number of projects using FVA and CISA differ, making such a comparison difficult.

increased risk reduction that will be achieved through this rule. Ensuring projects are built to the height necessary to avoid additional loss scenarios will provide additional unquantified benefits of avoided damages to the structure,

decreased cleanup time and disruption to the community, and increased public health and safety. Moreover, FEMA’s use of CISA as its preferred approach will use the best available and actionable scientific data to tailor future

flooding risk to each project, ensuring that projects are built only to the height necessary and thus maximizing net benefits. Accordingly, FEMA believes the benefits of the rule—quantified and unquantified—will justify its costs.

Table 15: Summary of 60-Year Costs, Transfers, and Benefits by Approach and Program for Affected Projects in Years 1-10 (Low Estimate, 2022S)

Costs ³³¹	3% Discount Rate			7% Discount Rate	
	Undiscounted	Present Value	Annualized	Present Value	Annualized
CISA (primary) (+5-ft)	\$149,215,620	\$127,283,949	\$4,599,146	\$104,802,806	\$7,465,023
PA	\$104,341,798	\$89,005,671	\$3,216,038	\$73,285,315	\$5,220,056
IA	\$1,681,740	\$1,434,557	\$51,835	\$1,181,184	\$84,135
HMA	\$43,192,063	\$36,843,704	\$1,331,272	\$30,336,295	\$2,160,831
FVA	\$756,606,840	\$645,400,983	\$23,320,247	\$531,408,984	\$37,851,850
0.2PFA	\$43,407,580	\$37,027,545	\$1,337,915	\$30,487,667	\$2,171,613
FEMA Admin	\$7,752,811	\$6,700,641	\$242,114	\$5,617,336	\$400,118
Not Quantified	Not Estimated: Increased resiliency standard for approximately 26,985 facility projects over 10 years, Additional costs for Adding Requirements to Buildings with Basements, Diversion of Projects Out of the Floodplain, Lifecycle maintenance costs for floodproofing, and Project Delays and Forgone Projects				
Transfer Payments from FEMA to Grant Recipients					
CISA Total (primary) (+5-ft)	\$122,766,330	\$104,722,168	\$3,783,922	\$86,225,934	\$6,141,806
PA	\$88,690,530	\$75,654,821	\$2,733,633	\$62,292,516	\$4,437,048
IA	\$1,681,740	\$1,434,557	\$51,835	\$1,181,184	\$84,135
HMA	\$32,394,060	\$27,632,790	\$998,454	\$22,752,232	\$1,620,624
FVA Total	\$50,748,250	\$43,289,287	\$1,564,170	\$35,643,448	\$2,538,855
0.2PFA Total	\$35,173,090	\$30,003,358	\$1,084,110	\$24,704,108	\$1,759,654
Benefits					
PA (CISA, primary) (+1-ft)	\$65,817,290	\$56,143,482	\$2,028,630	\$46,227,310	\$3,292,735
Not Quantified	Not Estimated: Damage Avoidance for approximately 12,322 IA and HMA structure projects and 26,985 PA and HMA facility projects over 10 years, Potential Lives Saved, Increased Public Health and Safety, Decreased Cleanup Time, Protection of Critical Facilities, Reduction of Personal and Community Impacts				

³³¹ To obtain the total costs as in Section 7.12, add each individual approach to the FEMA admin

cost. For example, CISA + FEMA admin = total CISA cost.

Table 16: Summary of 60-Year Costs, Transfers, and Benefits by Approach and Program for Affected Projects in Years 1-10 (High Estimate, 2022\$)

Costs ³³²	Undiscounted	3% Discount Rate		7% Discount Rate	
		Present Value	Annualized	Present Value	Annualized
CISA (primary) (+5-ft)	\$189,853,700	\$161,949,055	\$5,851,699	\$133,345,292	\$9,498,082
PA	\$144,979,878	\$123,670,781	\$4,468,591	\$101,827,801	\$7,253,115
IA	\$1,681,740	\$1,434,557	\$51,835	\$1,181,184	\$84,135
HMA	\$43,192,063	\$36,843,704	\$1,331,272	\$30,336,295	\$2,160,831
FVA	\$74,555,130	\$63,597,039	\$2,297,949	\$52,364,403	\$3,729,876
0.2PFA	\$51,081,940	\$43,573,931	\$1,574,455	\$35,877,816	\$2,555,549
FEMA Admin	\$9,093,061	\$7,843,901	\$283,423	\$6,558,671	\$467,169
Not Quantified	Not Estimated: Increased resiliency standard for approximately 26,985 facility projects over 10 years, Additional costs for Adding Requirements to Buildings with Basements, Diversion of Projects Out of the Floodplain, Lifecycle maintenance costs for floodproofing, and Project Delays and Forgone Projects				
Transfer Payments from FEMA to Grant Recipients					
CISA Total (primary) (+5-ft)	\$157,308,700	\$134,187,512	\$4,848,592	\$110,487,049	\$7,869,907
PA	\$123,232,900	\$105,120,163	\$3,798,303	\$86,553,631	\$6,165,148
IA	\$1,681,740	\$1,434,557	\$51,835	\$1,181,184	\$84,135
HMA	\$32,394,060	\$27,632,790	\$998,454	\$22,752,232	\$1,620,624
FVA Total	\$61,609,580	\$52,554,220	\$1,898,939	\$43,271,991	\$3,082,230
0.2PFA Total	\$41,696,300	\$35,567,787	\$1,285,169	\$29,285,736	\$2,086,000
Benefits					
PA (CISA, primary) (+1-ft)	\$77,506,550	\$66,114,661	\$2,388,918	\$54,437,358	\$3,877,531
Not Quantified	Not Estimated: Damage Avoidance for approximately 12,322 IA and HMA structure projects and 26,985 PA and HMA facility projects over 10 years, Potential Lives Saved, Increased Public Health and Safety, Decreased Cleanup Time, Protection of Critical Facilities, Reduction of Personal and Community Impacts				

In Table 17, FEMA presents the OMB A-4 Accounting Statement. FEMA's analysis presents a range for costs and transfers of +5-ft of freeboard, and the benefits of +1-ft of freeboard. The range is due to uncertainty about whether new construction PA Category E projects will choose to floodproof or elevate.³³³

Accordingly, FEMA's PA minimum estimate assumes all new construction projects choose to floodproof and the maximum assumes all new construction projects choose to elevate. FEMA's analysis for HMA and IA projects do not have a range. Table ES-14 shows the primary costs and transfers using the

CISA approach only and the average of the ranges. FEMA has calculated the total benefits using the minimum and maximum estimates of PA benefits. FEMA has calculated the primary benefit estimates using the CISA approach with a 59-inch SLR and then taking the average of this range.

³³² To obtain the total costs as in Section 7.12, add each individual approach to the FEMA admin cost. For example, CISA + FEMA admin = total CISA cost.

³³³ Because it is more expensive to elevate substantial repair projects than to floodproof them, FEMA assumes that all substantial repair projects will choose to floodproof.

Table 17: A-4 Accounting Statement: Benefits, Costs and Transfers from 2023-2082 for Projects Undertaken in 2023 – 2032 (2022\$)

CATEGORY	PRIMARY ESTIMATE ³³⁴	MINIMUM ESTIMATE	MAXIMUM ESTIMATE	SOURCE CITATION (RIA, preamble, etc.)
BENEFITS*				
Annualized Monetized benefits	3 percent: \$2,208,774 7 percent: \$3,585,133	3 percent: \$2,028,630 7 percent: \$3,292,735	3 percent: \$2,388,918 7 percent: \$3,877,531	RIA Section 7.14.2
Annualized quantified, but unmonetized benefits	N/A	N/A	N/A	N/A
Qualitative (unquantified) benefits	<ul style="list-style-type: none"> Reduction in damage to properties and contents from future floods for approximately 12,322 IA and HMA structure projects and 26,985 PA and HMA facility projects in Years 1-10, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding. 			RIA Section 7.14.1 and 6.14.3
COSTS*				
Annualized monetized costs	3 percent: \$5,488,191 7 percent: \$8,915,196	3 percent: \$4,841,260 7 percent: \$7,865,141	3 percent: \$6,135,122 7 percent: \$9,965,251	RIA Sections 7.4, 7.5, 7.6, 7.8, 7.9
Qualitative (unquantified) costs	<ul style="list-style-type: none"> Increased resiliency standard for approximately 26,985 facility projects in Years 1-10 years, diversion of projects out of the floodplain, project delays and forgone projects, lifecycle maintenance costs for floodproofing, and additional costs for adding requirements to buildings with basements. 			RIA Section 7.11
TRANSFERS*				
Annualized monetized transfers grants	3 percent: \$4,316,257 7 percent: \$7,005,857	3 percent: \$3,783,922 7 percent: \$6,141,806	3 percent: \$4,848,592 7 percent: \$7,869,907	RIA Sections 7.13
from whom to whom?	From FEMA to recipients			
Category	Effects			Source Citation (RIA, preamble, etc.)
Effects on State, Local, Tribe, and Territory (SLTT) governments	<ul style="list-style-type: none"> SLTT grant recipients whose projects are for new construction, substantial improvement, or to address substantial damage and are located within the expanded floodplain would have to comply with the updated FFRMS regulations by elevating or floodproofing these projects to the new standard. Specific grant programs include IA, PA, and HMA. 			RIA

<p style="text-align: center;">Effects on small entities*</p>	<ul style="list-style-type: none"> • In an average year, FFRMS would impact about 1,154 PA Category E projects. Based on a random sample of 92 projects, FEMA found that the grant recipients for 47 of the projects met the definition of a small entity. FEMA estimated that 51 percent (47 ÷ 92) of projects, or 504 Category E projects were small entities under the Regulatory Flexibility Act. • In an average year, FFRMS would impact about 63 HMA elevation or floodproofing projects per year. Assuming 51 percent of HMA grants benefit small entities, FEMA estimated that the final rule would impact 32 small entities receiving HMA grants each year. • In an average year, FFRMS would impact about 1,036 PA Category C facilities. Based on a random sample of 91 projects, FEMA found that grant recipients for 70 of the projects, or 76.9 percent (70 ÷ 91), were small entities that would meet the definition of small entities under the Regulatory Flexibility Act. • In an average year, FFRMS would impact about 120 PA Category D facilities. Based on a random sample of 55 projects, FEMA found that grant recipients for 37 of the projects, or 67.3 percent (37 ÷ 55), were small entities that would meet the definition of small entities under the Regulatory Flexibility Act. • In an average year, FFRMS would impact about 208 PA Category F facilities. Based on a random sample of 68 projects, FEMA found that grant recipients for 55 of the projects, or 80.9 percent (55 ÷ 68), were small entities that would meet the definition of small entities under the Regulatory Flexibility Act. • In an average year, FFRMS would impact about 314 PA Category G facilities. Based on a random sample of 76 projects, FEMA found that grant recipients for 40 of the projects, or 52.6 percent (40 ÷ 76), were small entities that would meet the definition of small entities under the Regulatory Flexibility Act. • In an average year, FFRMS would impact about 84 HMA grant recipients received FEMA funding per year for minor flood controls and generator projects. Based on a random sample of 46 projects, FEMA found that grant recipients for 19 of the projects, or 41.3 percent (19 ÷ 46), were small entities that would meet the definition of small entities under the Regulatory Flexibility Act. 	<p style="text-align: center;">Final Rule Preamble, Regulatory Flexibility Act</p>
<p>Effects on wages</p>	<p style="text-align: center;">None</p>	<p style="text-align: center;">N/A</p>
<p>Effects on growth</p>	<p style="text-align: center;">None</p>	<p style="text-align: center;">N/A</p>

* FEMA limited its dollar-valuation to the projects impacted in the first 10 years after the rule’s effective date. FEMA considered the resulting costs, benefits, and transfer payments of the final rule on those projects over a 50-year period, for a total of 60 years. The costs and transfers occur in the first 10 years of the 60-year period because that is when the initial investment in those projects takes place to elevate or floodproof them to meet the FFRMS requirements. This is an upfront cost that occurs when the project is constructed. However, the benefits of the final rule would be realized over the 50-year useful life of the affected structures.

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B. Regulatory Flexibility Act

This section considers the effects that this rule will have on small entities as required by the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*, Pub. L. 96-354) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The

³³⁴ FEMA has calculated the primary estimates by calculating the average of the minimum and the maximum estimates for respective each percent. For example, for the primary 3 percent benefits, FEMA calculated the average for 3 percent discount minimum and 3 percent discount maximum.

RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). Small entities include small businesses, small organizations, and small governmental jurisdictions.

FEMA prepared a Final Regulatory Flexibility Analysis (FRFA) for this rule. This analysis is detailed in this section and represents FEMA’s assessment of

the impacts of this rule on small entities. Section 1 outlines FEMA’s assessment of small entities that will be affected by the regulations. Section 2 presents FEMA’s analysis and summarizes the steps taken by FEMA to comply with the FRFA.

1. Assessment of Small Entities Affected by the Regulations

This rule will affect FEMA grant recipients that receive Federal funds under the PA, IA, and HMA programs for new construction, substantial improvement to structures, or to address substantial damage to structures and

facilities. Recipients of these grants are primarily States, Tribal governments, local governmental jurisdictions, and certain non-profit organizations. FEMA does not provide grants to for-profit businesses.

2. Analysis and Steps Taken To Comply With the Regulatory Flexibility Act

The following addresses the below requirements 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, 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;

(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 which affect the impact on small entities was rejected.

2.1 Statement of the need for, and objectives of the rule.

FEMA is responsible for publishing information on floodplain areas and identifying special hazards. FEMA is also responsible for several grant programs that use Federal funds to assist in construction or reconstruction following a disaster, as well as grants for hazard mitigation and recovery. These grants can potentially be used for locations within a floodplain.

To meet the requirements of section 2(d) of Executive Order 11988, directing agencies to issue or amend existing

regulations and procedures to implement the Executive Order, FEMA promulgated regulations located at 44 CFR part 9. FEMA is revising 44 CFR part 9 to reflect the changes to Executive Order 11988 made by Executive Order 13690.

The objective of the rule is to revise the regulations for locating actions subject to the FFRMS in an expanded floodplain to reduce the risk of flooding to those projects. In addition, for actions that are determined to be “critical actions” as defined by the rule, the rule will impose more stringent elevation and resilience requirements. This is necessary to protect actions where even a slight chance of flooding is too great.

The rule will also require the use, where possible, of natural features and nature-based approaches when developing alternatives for consideration that will accomplish the same purpose as a considered action but have less potential to affect or be affected by the floodplain. Common examples of a nature-based approach will be replacing concrete drainage systems with natural drainage or covering an area with plants to absorb water and reduce runoff.

Several programs exist to assist with flood mitigation or recovery efforts after a flood.³³⁵ IA and PA are disaster relief programs and primarily provide assistance after a disaster. HMA Grants are provided to increase resilience to hazards, and these have been shown to be very effective. By requiring recipients of FEMA funding to consider an expanded floodplain and build a higher level of flood resilience into their projects, the rule will reduce the likelihood of further damage and help prevent the loss of life in future flooding events. This will compel recipients of Federal funds to build to higher flood resilience standards and avoid repetitive loss situations.

2.2 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 to the proposed rule as a result of such comments.

FEMA did not receive any comments on the IRFA for this rule, and therefore did not make any changes to this FRFA due to public comments.

2.3 The response of the agency to any comments filed by the Chief

Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the final rule as a result of the comments.

FEMA did not receive any comments on the proposed rule from the Chief Counsel for Advocacy of the SBA.

2.4 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.

This rule will affect certain recipients of FEMA grants. These will primarily be PA and HMA grant recipients, including States, Tribal governments, local governments, and certain non-profit organizations. The PA grant recipients will include Categories C, D, E, F, and G projects; however, FEMA is only able to provide reasonable estimates of the number of entities and costs associated with Categories E (public buildings) because Category E is for structures whereas projects funded under the remaining PA categories are for facilities. Facilities will not be required to floodproof or elevate but will instead need to be made resilient to the appropriate flood levels, which is highly project-specific in nature, and the lack of data for such projects makes it exceedingly difficult to estimate costs. Therefore, FEMA has included only estimates of the number of affected facility projects but was unable to estimate a corresponding cost. IA and GPD are not discussed in this analysis. IA provides grants directly to individuals, who are not small entities as defined in 5 U.S.C. 601(6). FEMA finds that this rule will likely have no effect on GPD grants because GPD projects are not typically substantial improvement or new construction.

FEMA estimates that the FFRMS requirements will expand the floodplain between 5 percent and 43 percent based on a study³³⁶ conducted in 800 square miles of coastal and riverine areas representative of places where the FFRMS will apply. FEMA developed floodplain expansion estimates for two distinct areas of the country: coastal and riverine. The first estimate was for coastal areas where FEMA anticipates implementing the CISA approach using currently-actionable sea level rise data. The second estimate was the area that represented the rest of the country, where 0.2PFA or FVA approaches will likely be applied. A total of 400 square miles of mapped flood zones were used as the baseline estimate for each of the two areas of the country. FEMA selected

³³⁵ In addition to the FEMA-administered grant programs discussed in this analysis (IA, PA, HMA, and programs administered by GPD), FEMA also provides flood insurance through the NFIP. FEMA does not apply 44 CFR part 9 to non-grant site specific actions under the NFIP.

³³⁶ This report is available at [regulations.gov](https://www.regulations.gov) under docket ID FEMA-2023-0026.

a random sample of 40 coastal and riverine areas representative of the areas where the FFRMS will apply, with at least 10 square miles in each sampled area to ensure varying topography was captured. FEMA calculated the floodplain expansion in each sample at various levels of freeboard so that there was a total of 400 square miles of expansion information for each area.

FEMA selected the CISA as the primary approach for evaluating the impacts of this final rule, since it is the preferred approach and is designed to meet current and future estimates of flood risks unique to the location and thus provide the best overall resilience, cost effectiveness, and equity. FEMA does not have data detailed enough to estimate the average CISA level within the United States for this analysis. Instead, FEMA assumes CISA values will range from 1- to 10-ft of freeboard, based on the anticipated interagency tools that are currently in development. FEMA anticipates applying the CISA in those rounded amounts as “climate-informed freeboard.” The 10-foot ceiling will account for the highest levels of anticipated sea level rise along the Gulf and Atlantic coasts. Depending on location, under the CISA, some places may be required to elevate or floodproof to +1-ft above the 1 percent annual chance plain, while other places may be required to use +10-ft above the 1 percent annual chance plain. However, FEMA does not have available data or research to estimate what the required levels or how many structures will be subject to the requirements. For analysis purposes, FEMA has calculated the expanded floodplain using the mid-point (rounded down), +5-ft CISA level, which FEMA estimates will expand the floodplain by 26 percent.

FEMA considered using the minimum and maximum levels, but the minimum and maximum levels will not reflect the impacts of the rule accurately. FEMA did not use the minimum level for this approach because it will reflect a large number of structures that were not elevated or floodproofed to a high enough standard, when the rule may actually require them to be subject to a higher standard. If FEMA modeled all structures at the minimum standard, the costs would be underestimated compared to the actual impact of the rule. The benefits of protecting the structures from flood will also be underestimated because at the minimum level, many structures will be left vulnerable to devastating flood damage. Likewise, FEMA did not use the maximum level because it will reflect a large number of structures elevated or floodproofed to a standard

too high compared to what the rule may require. If FEMA modeled all structures at the maximum standard, the costs would be overestimated compared to the actual impact. The benefits of protecting the structures from flood could potentially be overestimated as well, and not reflect the actual impact of the rule.

PA provides grants to States, Tribal governments, local governments and certain non-profit organizations for rebuilding, replacement, or repair of public and non-profit facilities damaged by disasters. Where such rebuilding, replacement, or repair involves new construction, substantial improvement, and repair of substantial damage of structures in the expanded FFRMS floodplain, PA recipients will incur additional costs to comply with elevation and floodproofing requirements. From 2013–2022, 916 individual PA Category E grant recipients received FEMA funding for substantial improvement floodproofing³³⁷ or new construction. Under the CISA, with the 26 percent expansion of the floodplain, an additional 238 PA Category E projects (916 × 26 percent), for a total of 1,154 (916 + 238) projects, will be located in the 1 percent annual chance floodplain or expanded FFRMS floodplain over the 10-year period. FEMA randomly sampled 92 projects.³³⁸ Of the 92 projects, 47 projects, or 51 percent (47 ÷ 92), meet the definition of small entities under the Regulatory Flexibility Act.

HMA provides mitigation grants to States, Tribal governments, local governments, and certain non-profit organizations to, among other things, relocate property outside of the floodplain, or to elevate or floodproof structures above the flood level. FEMA will apply the FFRMS to all actions subject to the FFRMS, and all structure elevation, mitigation reconstruction, and dry floodproofing projects. As noted in the Regulatory Impact Analysis, FEMA funded an average of about 50 HMA elevation, mitigation reconstruction, and floodproofing structure projects per year from 2020–

³³⁷ The cost of elevating an existing structure is significantly higher than the cost of retrofitting the structure to be floodproofed, so FEMA assumed that substantial improvement projects would elect to floodproof rather than elevate.

³³⁸ The population of PA Category E projects includes all “Public Buildings” grants from 2013–2022 that received substantial improvement floodproofing or new construction funding. Because of the large population, FEMA used Slovin’s formula and a 90 percent confidence interval to determine the sample size. Slovin’s formula: $n = N / (1 + N^*e \wedge 2)$. Therefore, $1,154 / (1 + 1,154 \times 0.1 \wedge 2) = 92$ (rounded).

2022.³³⁹ Unlike PA grants, most HMA grants are for projects located in the floodplain, so for this analysis, FEMA assumes that all HMA elevation, mitigation reconstruction, and dry floodproofing projects are in the floodplain. FEMA cannot estimate what projects might be considered actions subject to the FFRMS in addition to structure elevation, mitigation reconstruction, and dry floodproofing projects because HMA data does not distinguish whether projects are considered new construction, substantial improvement, or repairs to address substantial damage. However, structure elevation, mitigation reconstruction, and dry floodproofing are the primary HMA projects relating to flood mitigation.³⁴⁰

With the 26 percent expansion of the floodplain, an additional 13 HMA projects per year (50 × 26 percent), for a total of 63 (50 + 13) projects, will be located in the 1 percent annual chance floodplain or expanded FFRMS floodplain. Assuming 51 percent³⁴¹ of HMA grant recipients are small entities, approximately 32 (63 projects × 51 percent) small entities receiving HMA grants will be affected per year.

Facilities will not be required to floodproof or elevate but will instead need to be made resilient to the appropriate FFRMS floodplain. Resilience measures for facilities are highly project-specific, and FEMA lacks data for such projects, making it exceedingly difficult to estimate costs. FEMA could not estimate the cost of this rule on small entities for facilities. However, FEMA conducted an analysis to estimate the number of small entities for affected facility projects based on historical data.

In an average year, FFRMS will impact about 1,036 PA Category C

³³⁹ FEMA was unable to obtain 10-years of historical data from 2013–2022 for HMA due to changes within the program’s database. Therefore, FEMA used the best available data for years 2010 through 2019 instead.

³⁴⁰ The other project type related to flood mitigation is acquisition. Generally, acquisition projects are for open space purposes and restore the natural and beneficial functions of the floodplain. Property acquisitions that result in relocated structures would be subject to FFRMS elevation and floodproofing requirements if the structure is relocated within the FFRMS floodplain. HMA data does not break out relocation costs from acquisition costs, so FEMA is unable to estimate additional relocation expenses for acquisition projects.

³⁴¹ In FEMA’s dataset, HMA recipients only included project titles and not the name of the grantee. This prevented FEMA from determining if a grant recipient was a small entity. Since PA and HMA provide funding to similar entities (States, Tribal governments, local governments, and certain non-profit organizations) for disaster related activity, FEMA used the percentages of small entity grant recipients found in PA Category E as a proxy for HMA small entities.

facilities. Based on a random sample of 91 projects,³⁴² FEMA found that grant recipients for 71 of the projects, or 76.9 percent (70 ÷ 91), met the definition of small entities under the Regulatory Flexibility Act.

In an average year, FFRMS will impact about 120 PA Category D facilities. Based on a random sample of 55 projects,³⁴³ FEMA found that grant recipients for 37 of the projects, or 67.3 percent (37 ÷ 55), met the definition of small entities under the Regulatory Flexibility Act.

In an average year, FFRMS will impact about 208 PA Category F facilities. Based on a random sample of 68 projects,³⁴⁴ FEMA found that grant recipients for 55 of the projects, or 80.9 percent (55 ÷ 68), met the definition of small entities under the Regulatory Flexibility Act.

In an average year, FFRMS will impact about 314 PA Category G facilities. Based on a random sample of 76 projects,³⁴⁵ FEMA found that grant recipients for 40 of the projects, or 52.6 percent (40 ÷ 76), met the definition of small entities under the Regulatory Flexibility Act.

In an average year, FFRMS will impact about 84 HMA grant recipients that received FEMA funding per year for minor flood controls and generator projects. Based on a random sample of 46 projects,³⁴⁶ FEMA found that grant recipients for 19 of the projects, or 41.3 percent (19 ÷ 46), were small entities under the definition of small entities under the Regulatory Flexibility Act.

2.5 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.

³⁴² Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: $n = N / (1 + N * e \wedge 2)$. Therefore, $1,036 / (1 + 1,036 \times 0.1 \wedge 2) = 91$ (rounded).

³⁴³ Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: $n = N / (1 + N * e \wedge 2)$. Therefore, $120 / (1 + 120 \times 0.1 \wedge 2) = 55$ (rounded).

³⁴⁴ Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: $n = N / (1 + N * e \wedge 2)$. Therefore, $208 / (1 + 208 \times 0.1 \wedge 2) = 68$ (rounded).

³⁴⁵ Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: $n = N / (1 + N * e \wedge 2)$. Therefore, $314 / (1 + 314 \times 0.1 \wedge 2) = 76$ (rounded).

³⁴⁶ Because of the large population, FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: $n = N / (1 + N * e \wedge 2)$. Therefore, $84 / (1 + 84 \times 0.1 \wedge 2) = 46$ (rounded).

FEMA will not be changing the application process for its grant programs. The majority of the costs for the increased elevation or floodproofing requirements of structures in the FFRMS floodplain will be funded by FEMA through several grant programs. Small entities, like all entities, will be subject to additional costs not covered by these grants for the floodproofing, elevation of structures, and flood resilience measures required by the rule. For the purposes of this analysis, and based on historical data, FEMA presents the costs such that all projects will choose to elevate because of the additional level of safety that elevation provides over floodproofing and a historically higher number of HMA projects that involved elevation as opposed to floodproofing.³⁴⁷ FEMA uses an NFIP report to estimate the cost of the elevation requirements.³⁴⁸ The report provides estimates for the cost of elevating structures as a percentage of total construction cost.

The cost of elevating an existing structure is considerably higher than the cost of retrofitting the structure to be floodproofed. Floodproofing involves sealing off areas below the flood level so that water cannot enter or altering the use of these areas so that flood waters may pass through without causing serious damage. Non-residential structures, where elevation is not feasible, may be floodproofed rather than elevated. Additionally, floodproofing existing properties may be less costly than elevating an existing property. So, where a project may floodproof rather than elevate, costs may be lower for some projects than the costs presented here. However, for existing properties that choose to elevate rather than floodproof, costs may be higher for some projects than the costs presented here because the NFIP report cost estimates are for when freeboard is included in the design of a structure. New buildings will be evaluated for both dry floodproofing (preventing the intrusion of floodwaters into the building by using a system of waterproofing and shields) and elevation (constructing higher), while existing buildings will only be evaluated for dry floodproofing.

As established above, FEMA estimates this rule will impact 47 small entity PA

Category E projects annually. Using CISA as the primary approach, FEMA estimates that the total cost for the elevation and floodproofing requirements of this rule for all PA Category E projects will be between \$10,434,180 (\$104,341,798 ÷ 10 years) and \$14,497,988 (\$144,979,878 ÷ 10 years) annually for 115 (1,154 PA Total FFRMS action Category E projects ÷ 10 years) projects annually. Therefore, each project will cost between \$90,732 (\$10,434,180 ÷ 115 projects) and \$126,078 (\$14,497,988 ÷ 115 projects). There is an average of 47 small entity PA projects per year. Small entity projects will have a total average expected cost between \$4,264,404 ($\$90,732 \times 47$ small entities PA projects) and \$5,925,666 ($\$126,078 \times 47$ small entities PA projects) per year. The historical average cost share for PA Category E projects is 85.0 percent covered by FEMA and 15.0 percent covered by the recipients, with the majority of recipients receiving a 75 percent or a 90 percent cost share, depending on the type of disaster declaration. FEMA estimates that, for PA Category E projects, each small entity will have an average expected cost (*i.e.*, their portion of the cost share) of between \$13,610 ($\$90,732 \times 15.0$ percent) and \$18,912 ($\$126,078 \times 15.0$ percent) per project.

As established above, FEMA estimates that this rule will affect approximately 32 small HMA grant recipients per year. Using CISA as the primary approach, FEMA estimates that the total 10-year cost for the elevation and floodproofing requirements of this rule for HMA projects will be \$4,319,206 ($\$43,192,063 \div 10$ years) annually for 1,040 (10,398 HMA Total FFRMS action projects ÷ 10 years) projects annually. There is an average of 32 small entities HMA projects per year. The average HMA project cost is \$4,153 ($\$4,319,206 \div 1,040$ HMA projects) per project. The cost-sharing arrangement for HMA is 75 percent Federal and 25 percent recipient, so HMA recipients will be required to fund 25 percent of the costs to comply with the requirements of the rule. Each small entity cost share will have an average expected cost of \$1,038 ($\$4,153 \times 25$ percent).

Reporting and recordkeeping are not expected to change, with the exception of minor changes to FEMA's Mitigation Grant Program/e-Grants system. FEMA will continue to make the determination of whether a project will take place in an FFRMS floodplain.

2.6 Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated

³⁴⁷ According to historical HMA data, there have been an average of 63 elevation projects and only 4 floodproofing projects per year.

³⁴⁸ FEMA, "2008 Supplement to the 2006 Evaluation of the National Flood Insurance Program's Building Standards" Table 3, available at https://www.fema.gov/sites/default/files/2020-07/fema_nfip_2008_freeboard_report_0.pdf (last accessed Apr. 29, 2024).

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 which affect the impact on small entities was rejected.

The standards in this rule represent FEMA's efforts to implement Executive Order 11988, as amended, which establishes executive branch-wide policy in this area. Executive Order 13690 establishes the FFRMS. The policies established in these EOs do not consider exempting small entities from all or part of the standard; the purpose of the FFRMS is to ensure that agencies expand management from the current base flood level to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk and help ensure that projects funded with taxpayer dollars last as long as intended. Accordingly, the FFRMS will apply to all affected FEMA projects, including small entities.

As discussed previously, most of the cost of the mitigation standards required by this rule will be paid by FEMA in the form of additional PA, IA, or HMA grants. Cost sharing is required for most FEMA grant programs. For PA and HMA, affected small entities will be required to pay the recipient portion of the cost share, which is 25 percent in most cases. There are, however, some exceptions and cost shares can be waived or set at a different level by Congress for PA. FEMA does not have the authority to adjust the cost share specifically for small entities.

Executive Order 11988, as amended, allows several approaches to determine the FFRMS floodplain. Section F of this Final Rule, FEMA's Implementation of Executive Order 11988, as amended, and FFRMS, describes the FFRMS approaches allowed by Executive Order 11988, as amended, and FEMA's considerations when selecting between the FFRMS approaches. FEMA will, in its accompanying policy, use the CISA as the preferred approach. FEMA has chosen the CISA as its preferred approach because it is the only one that uses the best available climate science to help ensure projects are designed to meet current and future flood risks unique to the location and thus provides the best overall resilience, cost effectiveness, and equity. Accordingly, FEMA believes its preferred approach will minimize the risk that affected small entities incur more costs than necessary because of overprotection or incur preventable costs from future damage because of under protection.

The CISA establishes the required vertical elevation and corresponding horizontal floodplain, through the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science, in accordance with the Revised Guidelines. When such data is not available, this rule and supplementary policy direct the use of other approaches depending on the criticality of the action. The rule also requires the use of natural systems, ecosystem processes, and nature-based approaches where possible.

The FFRMS is a flexible framework to increase resilience against flooding and help preserve the natural and beneficial values of floodplains. Incorporating the FFRMS into FEMA regulations will ensure that FEMA expands flood risk management from the current base flood elevation to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk and helps ensure that projects funded with taxpayer dollars last as long as intended for all applicants, including small entities. FEMA considered a more protective approach for critical actions but did not select this approach. FEMA could have chosen a more protective approach in which it would determine the elevations established under CISA, FVA, and the 0.2PFA for critical actions and only allow the applicant to use the highest of the three elevations. This approach would ensure that applicants were protecting these critical assets at the highest level. However, this approach may lead to overbuilding and not be the most cost-effective or equitable approach for applicants including small entities.

FEMA also considered a more protective approach for all actions but did not select this approach. FEMA could have required use of the highest standard for all actions, regardless of criticality. While this approach would ensure that applicants, including small entities, were building all actions to the most protective level, this approach would likely lead to overbuilding and not be the most cost-effective, equitable approach, particularly for non-critical actions.

Small entities affected by the rule, as with any entity affected by the rule, will have the option to relocate outside of the floodplain. This may be preferable in cases where property can be obtained and new facilities built for less cost than elevating or floodproofing to the FFRMS level in the floodplain, and the recipient has the ability to relocate.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined this rulemaking will not result in the expenditure by State, Territorial, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments.³⁴⁹ Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), FEMA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. *See* 44 U.S.C. 3506, 3507. This final rule calls for no new collections of information under the PRA. The final rule includes information currently collected by FEMA and approved in OMB information collections 1660–0072 (FEMA Mitigation Grant Programs) and 1660–0076 (Hazard Mitigation Grant

³⁴⁹ FEMA expects that increased costs to applicants will be minimal. For example, FEMA found that for a project with a 75% FEMA/25% applicant cost share, the cost to an applicant to elevate a structure above the BFE to meet FEMA's FFRMS requirements using the FVA+2 (1.91 percent of construction cost) represented less than 0.5% of the total project cost, or an average of an additional \$4,775 in applicant cost share on an original total project cost of \$1,000,000. *See* A Benefit Analysis of Increased Freeboard for Public and Nonresidential Buildings in Riverine and Coastal Floodplains, posted to the public docket of this rulemaking at <https://www.regulations.gov/document/FEMA-2023-0026-0003>.

Program (HMGP) Application and Reporting). With respect to these collections, this final rule will not impose any additional burden and will not require a change to the forms, the substance of the forms, or the number of recipients who would submit the forms to FEMA.

E. Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation would result in a system of records. A “record” is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(5). An agency cannot disclose any record, which is contained in a system of records, except by following specific procedures.

In accordance with DHS policy, FEMA completed a Privacy Threshold Analysis for this rule. This rule is covered by the following PIAs: DHS/FEMA/PIA-006 FEMA National Emergency Management Electronic Grants System, DHS/FEMA/PIA-025-Hazard Mitigation Grant Program (HMGP) System, DHS/FEMA/PIA-026 Operational Data Store and Enterprise Data Warehouse PIA, and DHS/FEMA/PIA-031 Authentication and Provisioning Services (APS). No updates to these PIAs are necessary. Further, this rule is covered under the following System of Records Notices (SORNs): DHS/FEMA-009 Hazard Mitigation, Disaster Public Assistance, and Disaster Loan Programs, 79 FR 16015, Mar. 24, 2014; DHS/ALL-004 General Information Technology Access Account Records System (GITAARS), 77 FR 70792, Nov. 27, 2012; and DHS/FEMA-008 Disaster Recovery Assistance Files. This final rule will not create a new system of records, and no updates to these SORNs are necessary.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments,” 65 FR 67249, Nov. 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulations are provided by the Federal Government, or the agency consults with Tribal officials.

FEMA reviewed this final rule under Executive Order 13175 and determined that this rule would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Part 9 applies to FEMA disaster and non-disaster assistance programs, including IA, PA, and HMA programs, and grants processed by FEMA’s GPD. Pursuant to section 8 of Executive Order 11988, part 9 does not apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to sections 403 and 502 of the Stafford Act, as amended (42 U.S.C. 5170b and 5192).

Indian Tribes have the same opportunity to participate in FEMA’s grant programs as other eligible participants, and participation is voluntary. The requirements of this rule do not affect Tribes differently than other grant recipients. FEMA’s edits in this final rule specifically provide for Indian Tribal government information as a resource when making the floodplain determination under part 9, consistent with comments received.

G. Executive Order 13132, Federalism

Executive Order 13132, “Federalism,” 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have

federalism implications, that is, regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has determined this rulemaking does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order.

Part 9 applies to FEMA disaster and non-disaster assistance programs, including IA, PA, and HMA programs, and grants processed by FEMA’s GPD. Pursuant to section 8 of Executive Order 11988, part 9 does not apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to section 403 and 502 of the Stafford Act, as amended (42 U.S.C. 5170b and 5192). The final rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law, nor does it limit State policymaking discretion.

H. National Environmental Policy Act of 1969 (NEPA)

Section 102 of NEPA (42 U.S.C. 4321 *et seq.*) requires Federal agencies to evaluate the effects of a proposed major Federal action to determine if it will significantly affect the human environment, consider alternatives to the proposed action, provide public notice and opportunity for comment, and properly document its analysis. See 40 CFR parts 1501, 1506.6. DHS and its component agencies analyze proposed actions to determine whether NEPA applies and, if so, what level of analysis and documentation is required. 40 CFR 1501.3. DHS Directive 023-01, Rev. 01 and DHS Instruction Manual 023-01-001-01, Rev. 01 (Instruction Manual) establish the policies and procedures DHS and its component agencies use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing the procedural requirements of NEPA codified in 40 CFR parts 1500 through 1508. The CEQ regulations allow

Federal agencies to establish in their NEPA implementing procedures categories of actions (“categorical exclusions”) that normally do not have a significant effect on the human environment. Categorically excluded actions do not require preparation of an environmental assessment or environmental impact statement. 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). The Instruction Manual, Appendix A, lists the DHS categorical exclusions. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

The final rule updates the Floodplain Management and Protection of Wetland requirements to adopt the approaches outlined in Executive Order 11988, as amended. This involves establishing the floodplain, using the vertical elevation and corresponding horizontal extent, in the 8-step decision-making process FEMA follows in applying Executive Order 11988, as amended to its actions. FEMA’s final rule amends regulations codified at 44 CFR part 9 to revise the definition of the floodplain based on the approaches in Executive Order 11988, as amended, consisting of the Climate-Informed Science Approach (CISA), the freeboard value approach (FVA), the 0.2-percent-annual-chance flood approach (0.2PFA), and any other method identified in updates. The final rule allows FEMA to select and prioritize among these approaches. The rule revises the 8-step decision-making process to incorporate consideration of the approaches in determining if the project is in the floodplain. The rule also adds a requirement, where possible, to use natural systems, ecosystem processes, and nature-based approaches in the development of alternatives for Federal actions in a floodplain. The result of redefining the floodplain and applying the approaches outlined in Executive Order 11988, as amended, may be that structures and facilities determined to be in the floodplain (“the FFRMS floodplain”) would be designed to be more resilient, and more structures and facilities—due to the corresponding horizontal expansion of the floodplain—might be subject to an elevation requirement and/or other mitigation measures. Further, with the expanded horizontal floodplain, and application of the 8-step decision-making process,

which allows for Federal actions in the floodplain only if there is no practicable alternative, it is possible some structures or facilities that otherwise would be constructed in a high-risk flood area, would be constructed elsewhere. This would result in better protection of people and their property, the floodplain and environment. When placing the action in the floodplain cannot be avoided, implementing mitigation measures to actions in the FFRMS floodplain will not only promote public safety and lessen flood risk, but may also reduce the impact of the action on the floodplain, and thereby contribute to preserving the natural and beneficial values of the floodplain per the mandate in E.O. 11988. Similarly, the requirement to use natural systems, ecosystem processes, and nature-based approaches, where possible, in alternatives to the proposed action, would contribute to restoring and preserving the natural and beneficial values of the floodplain.

FEMA has determined NEPA applies to the final rule because it fits the definition of a “major federal action.” CEQ’s NEPA regulations define “major federal action” to include “new or revised agency rules,” regulations and policies. 40 CFR 1508.1(q)(2).

FEMA analyzed the final rule and finds it meets the three DHS criteria for a categorical exclusion. FEMA has determined consistent with the first criterion, the rule clearly fits within the categorical exclusion found at A3 in the DHS Instruction Manual, Appendix A. Categorical exclusion A3 states “promulgation of rules, issuance of rulings or interpretations, and the development and publications of policies” may be categorically excluded if such actions “interpret or amend an existing regulation without changing its environmental effect.” Instruction Manual, Appendix A, A3(d). The final rule may result in requiring a structure or facility to have either higher elevation or floodproofing, or more resilient design. The rule provides for a higher resilience standard than the existing rule. It is possible the expanded horizontal floodplain may discourage placing a “Federal action” in the floodplain, as under the 8-step decision-making process, an action may be located in the floodplain only if there is no practicable alternative. In the event there is a practicable alternative, and new construction is consequently located outside the floodplain, the effect of the final rule would be to benefit the environment by contributing to restoring and preserving the values of the floodplain, as well as enhancing public safety. FEMA’s environmental

and historic preservation review would ensure that the agency takes into account other potential environmental impacts of locating outside the floodplain.

If the Federal action must be located in the FFRMS floodplain, that is, there is no practicable alternative, it will be subject to one of the three approaches or a combination of them. FEMA’s preferred approach is CISA. If the CISA is used, it could result in an estimated average of 5 feet of additional elevation for a structure (or floodproofing to that level). FEMA prefers the CISA because it uses the best actionable and available climate-informed science to determine the floodplain is the most effective way to make the action resilient. If the CISA data is not available and/or actionable, the final rule provides alternatives for determining the floodplain for critical actions and non-critical actions: for non-critical actions, the lesser of the freeboard value approach (2 or 3 feet above base flood elevation) or the 0.2 percent annual flood; and for critical actions, the higher of the freeboard value approach or 0.2 percent annual flood. Given the CISA or the combination of approaches may be used, the potential for the change in elevation (or floodproofing) levels varies. Further, if communities have stricter standards, which they are required to apply, the communities will still apply that standard, and thus, application of the FFRMS would not require a change in elevation. If the “Federal action” is substantial improvement or addresses substantial damage to a structure or facility, it would involve action in a pre-built environment, with the only change being the structure or facility might be elevated or floodproofed to the appropriate higher level. If design rather than elevation, or in addition to elevation, is used to comply with the FFRMS resilience standard, it is not anticipated it will significantly impact the environment. As part of implementing the FFRMS resilience standard, nature-based solutions are required in alternatives to the proposed action, where possible. When applied, they will benefit the environment by contributing to restoring and preserving the natural and beneficial values of the floodplain. None of the changes required by any of the combined FFRMS approaches are anticipated to change the environmental effects of application of the 8-step process. Categorical exclusion A3 applies to this regulatory action, however any of the Federally funded actions to which the FFRMS applies (new construction, substantial

improvement and repair of substantial damage) will undergo separate NEPA analysis.

In addition to and apart from application of the decision process in this final rule, all Federal actions, new construction, substantial improvement, and actions addressing substantial damage, are subject to NEPA review and must comply with NEPA requirements. Each Federal action subject to the FFRMS will be evaluated on an individual basis under NEPA and related environmental laws, regulations, and executive orders. The Federal action will not be approved unless it meets all applicable environmental and historic preservation requirements. Further, the Federal actions subject to the proposed rule must comply with all applicable floodplain requirements. *See* 44 CFR 9.11(d)(6) (referring to requirement to be consistent with the criteria of the NFIP at 44 CFR part 59 *et seq.* or any more restrictive Federal, State, or local floodplain management standard).

FEMA therefore concludes the final rule clearly fits within categorical exclusion A3. FEMA also finds the final rule meets the second and third DHS criteria for applying a categorical exclusion. The final rule is not a piece of a larger action, as it will be implemented independently of other FEMA actions and is a separate action unto itself. Furthermore, FEMA finds adopting the floodplain management and protection approaches outlined in Executive Order 11988, as amended, presents no extraordinary circumstances that increase the potential for significant environmental effects to the environment. Accordingly, the final rule is categorically excluded, and no further NEPA analysis or documentation is required.

I. Executive Orders 12898 and 14096 on Environmental Justice

Under Executive Order 12898, “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” (59 FR 7629, Feb. 16, 1994); and Executive Order 14096, “Revitalizing Our Nation’s Commitment to Environmental Justice for All” (88 FR 25251, Apr. 26, 2023), FEMA incorporates environmental justice into its policies and programs. Executive Order 14096 charges agencies to make achieving environmental justice part of their missions, consistent with statutory authority, by identifying, analyzing, and addressing disproportionate and adverse human health and environmental effects and hazards of Federal activities, including those related to climate

change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns.

This final rule will not have a disproportionate and adverse human health or environmental effect on communities with environmental justice concerns. FEMA addressed specific comments related to environmental justice above.

J. Executive Order 12630, Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, “Governmental Actions and Interference With Constitutionally Protected Property Rights” (53 FR 8859, Mar. 18, 1988).

K. Executive Order 12988, Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

L. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This final rule will not create environmental health risks or safety risks for children under Executive Order 13045, “Protection of Children From Environmental Health Risks and Safety Risks” (62 FR 19885, Apr. 23, 1997).

M. Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities, OMB Circular A-119

“Voluntary consensus standards” are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring owners of relevant intellectual property to agree to make that intellectual property available on a non-discriminatory, royalty-free, or reasonable royalty basis to all interested parties. OMB Circular A-119 directs agencies to use voluntary consensus standards in their regulatory actions in lieu of government-unique standards, except where inconsistent with law or otherwise impractical. The policies in the Circular are intended to reduce to a minimum the reliance by agencies on government-unique standards.

Consistent with then-President Obama’s Climate Action Plan,³⁵⁰ the

³⁵⁰The White House, “President Obama’s Climate Action Plan, 2nd Anniversary Progress Report—

National Security Council staff coordinated an interagency effort to create a new flood risk reduction standard for Federally funded projects. The views of Governors, mayors, and other stakeholders were solicited and considered as efforts were made to establish a new flood risk reduction standard for Federally funded projects. The FFRMS is the result of these efforts.

N. Congressional Review of Agency Rulemaking

Under the Congressional Review Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of certain actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other relevant information or requirements under any other Act and any executive orders. FEMA has submitted this rule to the Congress and to GAO pursuant to the CRA. OMB has determined that this rule is not a “major rule” within the meaning of the CRA.

List of Subjects in 44 CFR Part 9

Floodplains; Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Federal Emergency Management Agency (FEMA) is amending 44 CFR part 9 as follows:

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

■ 1. The authority citation for part 9 is revised to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4321 *et seq.*; E.O. 11988 of May 24, 1977, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990 of May 24, 1977, 42 FR 26961, 3 CFR, 1977 Comp. p. 121; E.O. 13690, 80 FR 6425; E.O. 14030, 86 FR 27967.

■ 2. Revise § 9.1 to read as follows:

§ 9.1 Purpose.

This part sets forth the policy, procedure, and responsibilities to implement and enforce relevant sections of the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as

Continuing to cut carbon, pollution, protect American communities, and lead internationally.” June 2015 found at https://obamawhitehouse.archives.gov/sites/default/files/docs/cap_progress_report_final_w_cover.pdf (last accessed Jan. 24, 2024).

amended, 42 U.S.C. 4001 *et seq.*, the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, as amended, and other relevant statutory authorities in conjunction with Executive Order 11988, Floodplain Management, as amended, and Executive Order 11990, Protection of Wetlands.

■ 3. Amend § 9.2 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 9.2 Policy.

* * * * *

(b) The Agency will provide leadership in floodplain management and the protection of wetlands, informed by the best available and actionable science, to bolster the resilience of communities and Federal assets against the impacts of flooding, which are anticipated to increase over time due to the effects of changing conditions which adversely affect the environment, economic prosperity, public health and safety, and national security.

(c) The Agency shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

(d) The Agency shall:

- (1) Minimize the impact of floods on human health, safety, and welfare;
- (2) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction and modification of wetlands;
- (3) Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative;
- (4) Reduce the risk of flood loss;
- (5) Promote the use of nonstructural flood protection methods to reduce the risk of flood loss;
- (6) Minimize the destruction, loss, or degradation of wetlands;
- (7) Restore and preserve the natural and beneficial values served by floodplains;
- (8) Preserve and enhance the natural values of wetlands;
- (9) Involve the public throughout the floodplain management and wetlands protection decision-making process;
- (10) Adhere to the objectives of the Unified National Program for Floodplain Management; and
- (11) Improve and coordinate the Agency's plans, programs, functions, and resources so that the Nation may attain the widest range of beneficial uses of the environment without degradation or risk to health and safety.

■ 4. Revise § 9.3 to read as follows:

§ 9.3 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any action should be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of this subpart and shall not affect the remainder thereof.

■ 5. Amend § 9.4 by:

- a. Adding in alphanumeric order definitions for “0.2 percent annual chance flood elevation”, “0.2 percent annual chance floodplain”, “1 percent annual chance flood elevation”, and “1 percent annual chance floodplain”;
- b. Revising the definitions of “Action” and “Actions Affecting or Affected by Floodplains or Wetlands”;
- c. Adding in alphabetical order a definition for “Action subject to the Federal Flood Risk Management Standard”;
- d. Removing the definitions of “Base Flood” and “Base Floodplain”;
- e. Adding in alphabetical order a definition for “Base flood elevation”;
- f. Revising the definitions of “Coastal High Hazard Area”, “Critical Action”, and “Emergency Actions”;
- g. Adding in alphabetical order definitions for “Federal Flood Risk Management Standard (FFRMS)”, “Federal Flood Risk Management Standard (FFRMS) floodplain”, “Federally funded project”, and “FEMA Resilience”;
- h. Removing the definitions of “FIA” and “Five Hundred Year Floodplain”;
- i. Revising the definition of “Flood or flooding”;
- j. Removing the definitions of “Flood Fringe”, “Flood Hazard Boundary Map (FHBM)”, “Flood Insurance Rate Map (FIRM)”, and “Flood Insurance Study (FIS)”;
- k. Revising the definitions of “Floodplain”, “Functionally Dependent Use”, and “Mitigation”;
- l. Removing the definition of “Mitigation Directorate”;
- m. Adding in alphabetical order definitions for “National security”, “Nature-based approaches”, “Natural and beneficial values of floodplains and wetlands”, and “Natural features”;
- n. Removing the definition of “Natural Values of Floodplains and Wetlands”;
- o. Revising the definition of “New Construction”;
- p. Removing the definition of “New Construction in Wetlands”;
- q. Revising the definitions of “Orders”, “Practicable”, “Regulatory

Floodway”, “Restore”, “Structures”, and “Substantial Improvement”;

- r. Adding in alphabetical order a definition for “Support of floodplain and wetland development”;
- s. Removing the definition of “Support”; and
- t. Revising the definition of “Wetlands”.

The additions and revisions read as follows:

§ 9.4 Definitions.

0.2 percent annual chance flood elevation means the elevation to which floodwater is anticipated to rise during the 0.2 percent annual chance flood (also known as the 500-year flood).

0.2 Percent annual chance floodplain means the area subject to flooding by the 0.2 percent annual chance flood (also known as the 500-year floodplain).

1 percent annual chance flood elevation—see the definition of *base flood elevation* in this section.

1 percent annual chance floodplain means the area subject to flooding by the 1 percent annual chance flood (also known as the 100-year floodplain or base floodplain).

Action means

- (1) Acquiring, managing, and disposing of Federal lands and facilities;
- (2) Providing federally undertaken, financed, or assisted construction and improvements; and
- (3) Conducting Federal activities and programs affecting land use, including, but not limited to, water and related land resources, planning, regulating, and licensing activities.

Actions affecting or affected by floodplains or wetlands means actions which have the potential to result in the long- or short-term impacts associated with:

- (1) The occupancy or modification of floodplains, and the direct or indirect support of floodplain development, or
- (2) The destruction and modification of wetlands and the direct or indirect support of new construction in wetlands.

Action subject to the Federal Flood Risk Management Standard (FFRMS) means any action where FEMA funds are used for new construction, substantial improvement, or to address substantial damage to a structure or facility.

* * * * *

Base flood elevation means the elevation to which floodwater is anticipated to rise during the 1 percent annual chance flood (also known as the base flood or 100-year flood). The terms “base flood elevation,” “1 percent annual change flood elevation,” and “100-year flood elevation” are

synonymous and are used interchangeably.

Coastal high hazard area means an area of flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Critical action means any action for which even a slight chance of flooding is too great. Critical actions include, but are not limited to, those which create or extend the useful life of structures or facilities:

(1) Such as those which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(2) Such as hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(3) Such as emergency operation centers, or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(4) Such as generating plants, and other principal points of utility lines.

* * * * *

Emergency actions means emergency work essential to save lives and protect property and public health and safety performed under sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (42 U.S.C. 5170b and 5192).

* * * * *

Federal Flood Risk Management Standard (FFRMS) means the Federal flood risk management standard to be incorporated into existing processes used to implement Executive Order 11988, as amended.

Federal Flood Risk Management Standard (FFRMS) floodplain means the floodplain established using one of the approaches described in § 9.7(c) of this part.

Federally funded project—see the definition of *Action subject to the Federal Flood Risk Management Standard* in this section.

FEMA Resilience means the organization within FEMA that includes the Federal Insurance and Mitigation Administration, the Grants Program Directorate, and the National Preparedness Directorate.

* * * * *

Flood or flooding means the general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual

and rapid accumulation of runoff of surface waters from any source. *0.2 percent annual chance flood* means the flood which has a 0.2 percent chance of being equaled or exceeded in any given year (also known as the 500-year flood). *1 percent annual chance flood* means the flood which has a 1 percent chance of being equaled or exceeded in any given year (also known as the 100-year flood or base flood). The terms “base flood,” “1 percent annual chance flood,” and “100-year flood” are synonymous and are used interchangeably.

* * * * *

Floodplain means any land area that is subject to flooding. The term “floodplain,” by itself, refers to geographic features with undefined boundaries. For the purposes of this part, the FFRMS floodplain shall be established using one of the approaches described in § 9.7(c). See the definitions of *0.2 percent annual chance floodplain*, *1 percent annual chance floodplain*, and *Federal Flood Risk Management Standard floodplain* in this section.

* * * * *

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

* * * * *

Mitigation means steps necessary to minimize the potentially adverse effects of the proposed action, and to restore and preserve the natural and beneficial floodplain values and to preserve and enhance natural values of wetlands.

* * * * *

National security means:

(1) A condition that is provided by either:

(i) A military or defense advantage over any foreign nation or group of nations;

(ii) A favorable foreign relations position; or

(iii) A defense posture capable of successfully resisting hostile or destructive action from within or without, overt or covert.

(2) National security encompasses both national defense and foreign relations of the United States.

Nature-based approaches means the features (sometimes referred to as “green infrastructure”) designed to mimic natural processes and provide specific services such as reducing flood risk and/or improving water quality. Nature-based approaches are created by human design (in concert with and to accommodate natural processes) and generally, but not always, must be

maintained in order to reliably provide the intended level of service.

Natural and beneficial values of floodplains and wetlands means features or resources that provide environmental and societal benefits. Water and biological resources are often referred to as “natural functions of floodplains and wetlands.” These values include, but are not limited to:

(1) Water resource values (storing and conveying floodwaters, maintaining water quality, and groundwater recharge);

(2) Living resource values (providing habitats and enhancing biodiversity for fish, wildlife, and plant resources);

(3) Cultural resource values (providing open space, natural beauty, recreation, scientific study, historic and archaeological resources, and education; and

(4) Cultivated resource values (creating rich soils for agriculture, aquaculture, and forestry).

Natural features means characteristics of a particular environment (e.g., barrier islands, sand dunes, wetlands) that are created by physical, geological, biological, and chemical processes and exist in dynamic equilibrium. Natural features are self-sustaining parts of the landscape that require little or no maintenance to continue providing their ecosystem services (functions).

New construction means the construction of a new structure or facility or the replacement of a structure or facility which has been totally destroyed. New construction includes permanent installation of temporary housing units. New construction in wetlands includes draining, dredging, channelizing, filling, diking, impounding, and related activities.

* * * * *

Orders means Executive Order 11988, Floodplain Management, as amended, and Executive Order 11990, Protection of Wetlands.

Practicable means capable of being done within existing constraints. The test of what is practicable depends on the situation and includes consideration of all pertinent factors, such as natural environment, social concerns, economic aspects, legal constraints, and agency authorities.

* * * * *

Regulatory floodway means the area regulated by Federal, State, or local requirements to provide for the discharge of the base flood so the cumulative rise in the water surface is no more than a designated amount above the base flood elevation.

Restore means to reestablish a setting or environment in which the natural functions of the floodplain can operate.

Structure means a walled and roofed building, including a temporary housing unit (manufactured housing) or a gas or liquid storage tank.

Substantial improvement means any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the pre-disaster market value of the structure or replacement cost of the facility (including all “public facilities” as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988) before the repair or improvement is started, or if the structure or facility has been damaged and is proposed to be restored. Substantial improvement includes work to address substantial damage to a structure or facility. If a facility is an essential link in a larger system, the percentage of damage will be based on the cost of repairing the damaged facility relative to the replacement cost of the portion of the system which is operationally dependent on the facility. The term “substantial improvement” does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

* * * * *

Support of floodplain and wetland development means to, directly or indirectly, encourage, allow, serve, or otherwise facilitate development in floodplains or wetlands. Development means any man-made change to improved or unimproved real estate, including but not limited to new construction, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials. Direct support results from actions within floodplains or wetlands, and indirect support results from actions outside of floodplains or wetlands.

Wetlands means those areas which are inundated or saturated by surface or ground water with a frequency sufficient to support, or that under normal hydrologic conditions does or would support, a prevalence of vegetation or aquatic life typically adapted for life in saturated or seasonally saturated soil conditions, including wetlands areas separated from their natural supply of water as a result of construction activities such as structural flood protection methods or solid-fill road beds, and activities such as mineral extraction and navigation improvements. Examples of wetlands include, but are not limited to, swamps, fresh and salt water marshes, estuaries, bogs, beaches, wet meadows, sloughs,

potholes, mud flats, river overflows, and other similar areas. This definition is intended to be consistent with the definition utilized by the U.S. Fish and Wildlife Service.

■ 6. Amend § 9.5 by revising paragraph (a)(3), the first sentence of paragraph (b)(1), and paragraphs (c) through (g) to read as follows:

§ 9.5 Scope.

(a) * * *

(3) The amendments to this part made on September 9, 2024 apply to new actions for which assistance is made available pursuant to declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 on or after September 9, 2024 and new actions for which assistance is made available pursuant to notices of funding opportunities published on or after September 9, 2024. For ongoing actions for which assistance was made available prior to that date, legacy program regulations (available at <http://www.fema.gov>) shall apply.

(b) * * *

(1) Executive Order 11990, Protection of Wetlands, contains a limited exemption not found in Executive Order 11988, Floodplain Management, as amended. * * *

* * * * *

(c) *Decision-making involving certain categories of actions.* The provisions set forth in this part are not applicable to the actions enumerated in paragraphs (c)(1) through (10) of this section except that the Regional Administrators shall comply with the spirit of Executive Order 11988, as amended, and Executive Order 11990 to the extent practicable. For any action which is excluded from the actions enumerated below, the full 8-step process applies (see § 9.6) (except as indicated at paragraphs (d), (e), and (g) of this section regarding other categories of partial or total exclusion). The provisions of this part do not apply to the following (all references are to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Public Law 93–288, as amended, except as noted):

(1) Assistance provided for emergency work essential to save lives and protect property and public health and safety performed pursuant to sections 403 and 502;

(2) Emergency Support Teams (section 303);

(3) Emergency Communications (section 418);

(4) Emergency Public Transportation (section 419);

(5) Fire Management Assistance (section 420), except for hazard

mitigation assistance under sections 404 and 420(d);

(6) Community Disaster Loans (section 417), except to the extent that the proceeds of the loan will be used for repair of facilities or structures or for construction of additional facilities or structures;

(7) The following Federal Assistance to Individuals and Households Program (section 408) categories of assistance:

(i) Financial assistance for temporary housing (section 408(c)(1)(A));

(ii) Lease and repair of rental units for temporary housing (section 408(c)(1)(B)(ii)), except that Step 1 (§ 9.7) shall be carried out;

(iii) Repairs (section 408(c)(2));

(iv) Replacement (section 408(c)(3)); and

(v) Financial assistance to address other needs (section 408(e)).

(8) Debris clearance and removal (sections 403 and 502), except those grants involving non-emergency disposal of debris within a floodplain or wetland (section 407);

(9) Actions under sections 406 and 407 of less than \$18,000. Such \$18,000 amount will be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor;

(10) Placement of families in existing resources and Temporary Relocation Assistance provided to those families so placed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96–510.

(d) *Abbreviated decision-making process applying steps 1, 4, 5, and 8.* The Regional Administrator shall apply steps 1, 4, 5, and 8 of the decision-making process (§§ 9.7, 9.10, and 9.11) to repairs under section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Public Law 93–288, as amended, between \$18,000 and \$91,000. Such \$18,000 and \$91,000 amounts will be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor. For any action which is excepted from the actions listed below (except as otherwise provided in this section regarding other categories of partial or total exclusion), the full 8-step process applies (See § 9.6). The Regional Administrator may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. Steps 1, 4, 5, and 8 of the decision-making process apply to actions under section 406 of the Stafford Act referenced above except for:

(1) Actions in a floodway or coastal high hazard area; or

(2) New construction, substantial improvement, or repairs to address substantial damage of structures or facilities; or

(3) Facilities or structures which have previously sustained damage from flooding due to a major disaster or emergency or on which a flood insurance claim has been paid; or

(4) Critical actions.

(e) *Abbreviated decision-making process applying steps 1, 2, 4, 5, and 8.* The Regional Administrator shall apply steps 1, 2, 4, 5, and 8 of the decision-making process (§§ 9.7, 9.8, 9.10, and 9.11, see § 9.6) to certain actions under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, Public Law 93–288, as amended, provided in paragraphs (e)(1) and (2) of this section. Steps 3 and 6 (§ 9.9) shall be carried out except that alternative sites outside the floodplain or wetland need not be considered. After assessing impacts of the proposed action on the floodplain or wetlands and of the site on the proposed action, alternative actions to the proposed action, if any, and the “no action” alternative shall be considered. The Regional Administrator may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. For any action which is excluded from the actions listed below (except as otherwise provided in this section regarding other categories of partial or total exclusion), the full 8-step process applies (see § 9.6). The Regional Administrator shall apply steps 1, 2, 4, 5, and 8 of the decision-making process (§§ 9.7, 9.8, 9.10, and 9.11, see § 9.6) to:

(1) Replacement of building contents, materials, and equipment (section 406).

(2) Repairs under section 406 to damaged facilities or structures, except any such action for which one or more of the following is applicable:

(i) FEMA estimated cost of repairs is more than 50 percent of the estimated reconstruction cost of the entire facility or structure or is more than \$364,000. Such \$364,000 amount will be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor; or

(ii) The action is located in a floodway or coastal high hazard area; or

(iii) Facilities or structures which have previously sustained structural damage from flooding due to a major disaster or emergency or on which a flood insurance claim has been paid; or

(iv) The action is a critical action.

(f) *Other categories of actions.* Based upon the completion of the 8-step decision-making process (§ 9.6), the Regional Administrator may find that a specific category of actions either offers no potential for carrying out the purposes of the Orders and shall be treated as those actions listed in paragraph (c) of this section, or has no practicable alternative sites and shall be treated as those actions listed in paragraph (e) of this section, or has no practicable alternative actions or sites and shall be treated as those actions listed in paragraph (d) of this section. This finding will be made in consultation with FEMA Resilience and the Council on Environmental Quality as provided in section 2(d) of Executive Order 11988, as amended. Public notice of each of these determinations shall include publication in the **Federal Register** and a 30-day comment period.

(g) *The National Flood Insurance Program (NFIP).* (1) FEMA Resilience shall apply the 8-step decision-making process to program-wide actions under the NFIP, including all regulations, procedures, and other issuances making or amending program policy, and the establishment of programmatic standards or criteria. FEMA Resilience shall not apply the 8-step decision-making process to the application of programmatic standards or criteria to specific situations. Thus, for example, FEMA Resilience would apply the 8-step process to a programmatic determination of categories of structures to be insured, but not to whether to insure each individual structure.

(2) The provisions set forth in this part are not applicable to the actions enumerated below except that FEMA Resilience shall comply with the spirit of the Orders to the extent practicable:

(i) The issuance of individual flood insurance policies and policy interpretations;

(ii) The adjustment of claims made under the Standard Flood Insurance Policy;

(iii) The hiring of independent contractors to assist in the implementation of the NFIP;

(iv) The issuance of individual flood insurance maps, Map Information Facility map determinations, and map amendments; and

(v) The conferring of eligibility for emergency or regular program (NFIP) benefits upon communities.

■ 7. Revise § 9.6 to read as follows:

§ 9.6 Decision-making process.

(a) *Purpose.* This section sets out the floodplain management and wetlands protection decision-making process to be followed by the Agency in applying

the Orders to its actions. The numbering of Steps 1 through 8 does not require that the steps be followed sequentially. As information is gathered through the decision-making process, and as additional information is needed, reevaluation of lower numbered steps may be necessary.

(b) *Decision-making process.* Except as otherwise provided in § 9.5 regarding categories of partial or total exclusion when proposing an action, the Agency shall apply the 8-step decision-making process. FEMA shall:

(1) *Step 1.* Determine whether the proposed action is located in a floodplain and/or a wetland as established by § 9.7; and whether it has the potential to affect or be affected by a floodplain or wetland (see § 9.7);

(2) *Step 2.* Notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland, and involve the affected and interested public in the decision-making process (see § 9.8);

(3) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland (including alternative sites, actions, natural features, nature-based approaches, and the “no action” option) (see § 9.9). If a practicable alternative exists outside the floodplain or wetland FEMA must locate the action at the alternative site.

(4) *Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action (see § 9.10);

(5) *Step 5.* Minimize the potential adverse impacts to or within floodplains and wetlands and minimize support of floodplain and wetland development identified under Step 4. Restore and preserve the natural and beneficial values served by floodplains, and preserve and enhance the natural and beneficial values served by wetlands. Integrate nature-based approaches where appropriate (see § 9.11);

(6) *Step 6.* Reevaluate the proposed action to determine first, if it is still practicable in light of its exposure to flood hazards, the extent to which it will aggravate hazards to others, and its potential to disrupt floodplain and wetland values; and second, if alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5. FEMA shall not act in a floodplain or wetland unless it is the only practicable location (see § 9.9);

(7) *Step 7.* Prepare and provide the public with a finding and public explanation of any final decision that the floodplain or wetland is the only practicable alternative (see § 9.12); and

(8) *Step 8.* Review the implementation and post-implementation phases of the proposed action to ensure that the requirements stated in § 9.11 are fully implemented. Oversight responsibility shall be integrated into existing processes.

■ 8. Amend § 9.7 by revising paragraphs (a), (b), (c), and (d)(3) and (4) to read as follows:

§ 9.7 Determination of proposed action's location.

(a) *Purpose.* This section establishes Agency procedures for determining whether any action as proposed is located in or affects a floodplain established in paragraph (c) of this section or a wetland.

(b) *Information needed.* (1) The Agency shall obtain enough information so that it can fulfill the requirements in this part to:

(i) Avoid Federal action in floodplain and wetland locations unless they are the only practicable alternatives; and
(ii) Minimize harm to and within floodplains and wetlands.

(2) In all cases, FEMA shall determine whether the proposed action is located in a floodplain or wetland. Information about the floodplain as established by paragraph (c) of this section and the location of floodways and coastal high hazard areas may also be needed to comply with this part, especially § 9.11.

(3) The following additional current and future flooding characteristics may be identified by the Regional Administrator as applicable:

- (i) Velocity of floodwater;
- (ii) Rate of rise of floodwater;
- (iii) Duration of flooding;
- (iv) Available warning and evacuation time and routes;
- (v) Special problems:
 - (A) Levees;
 - (B) Erosion;
 - (C) Subsidence;
 - (D) Sink holes;
 - (E) Ice jams;
 - (F) Debris load;
 - (G) Pollutants;
 - (H) Wave heights;
 - (I) Groundwater flooding;
 - (J) Mudflow.
- (vi) Any other applicable flooding characteristics.

(c) *Floodplain determination.* In the absence of a finding to the contrary, FEMA will determine that a proposed action involving a facility or structure that has been flooded previously is in the floodplain. In determining if a proposed action is in the floodplain:

(1) FEMA shall determine whether the action is an action subject to the FFRMS as defined in § 9.4.

(i) If the action is an action subject to the FFRMS, FEMA shall establish the FFRMS floodplain area and associated flood elevation by using the process specified in (c)(3) of this section and one of the following approaches:

(A) *Climate-Informed Science Approach (CISA):* Using a climate-informed science approach that uses the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. This approach will also include an emphasis on whether the action is a critical action as one of the factors to be considered when conducting the analysis;

(B) *Freeboard Value Approach (FVA):* Using the freeboard value, reached by adding an additional 2 feet to the base flood elevation for non-critical actions and by adding an additional 3 feet to the base flood elevation for critical actions;

(C) *0.2-Percent-Annual-Chance Flood Approach (0.2PFA):* The 0.2 percent annual chance flood; or

(D) Any other method identified in an update to the FFRMS.

(ii) FEMA may select among and prioritize the approaches in this paragraph (c)(1) by policy.

(iii) FEMA may provide an exception to using the FFRMS floodplain and corresponding flood elevation for an action subject to the FFRMS and instead use the 1 percent annual chance (base) floodplain for non-critical actions or the 0.2 percent annual chance floodplain for critical actions where the action is in the interest of national security, where the action is an emergency action, or where the action is a mission-critical requirement related to a national security interest or an emergency action.

(2) If the action is not an action subject to the FFRMS as defined in § 9.4, FEMA shall use, at a minimum:

(i) The 1 percent annual chance (base) floodplain and flood elevation for non-critical actions; and

(ii) The 0.2 percent annual chance floodplain and flood elevation for critical actions.

(3) FEMA shall establish the floodplain and corresponding elevation using the best available information. The floodplain and corresponding elevation determined using the best available information must be at least as restrictive as FEMA's regulatory determinations under the NFIP where such determinations are available. In obtaining the best available information, FEMA may consider other FEMA information as well as other available information, such as information from:

(i) Department of Agriculture: Natural Resources Conservation Service, U.S. Forest Service;

(ii) Department of Defense: U.S. Army Corps of Engineers;

(iii) Department of Commerce: National Oceanic and Atmospheric Administration;

(iv) Department of the Interior: Bureau of Land Management, Bureau of Reclamation, National Park Service, U.S. Fish and Wildlife Service, United States Geological Survey;

(v) Tennessee Valley Authority;

(vi) Department of Transportation;

(vii) Environmental Protection Agency;

(viii) General Services Administration;

(ix) Agencies of State, Regional, and Indian Tribal governments; or

(x) Local sources such as Floodplain Administrators, Regional Flood Control Districts, or Transportation Departments.

(4) If the sources listed in paragraph (c)(3) of this section do not have or know of the information necessary to comply with the requirements in this part, the Regional Administrator may seek the services of a professional registered engineer.

(5) If a decision involves an area or location within extensive Federal or state holdings or a headwater area and FEMA's regulatory determinations under the National Flood Insurance Program are not available, the Regional Administrator shall seek information from the land administering agency before information and/or assistance is sought from the sources listed in paragraph (c)(3) of this section.

(d) * * *

(3) If the identified sources do not have adequate information upon which to base the determination, the Agency shall carry out an on-site analysis performed by a representative of the FWS or other qualified individual for wetlands characteristics based on the definition of a wetland in § 9.4.

(4) If an action constitutes new construction and is in a wetland but not in a floodplain, the provisions of this part shall apply. If the action is not in a wetland, the Regional Administrator shall determine if the action has the potential to result in indirect impacts on wetlands. If so, all potential adverse impacts shall be minimized. For actions which are in a wetland and the floodplain, completion of the decision-making process is required. (See § 9.6). In such a case, the wetland will be considered as one of the natural and beneficial values of the floodplain.

■ 9. Amend § 9.8 by revising paragraphs (a) and (c)(1), the first sentence of

paragraph (c)(2), and paragraphs (c)(3) introductory text, (c)(3)(v), and (c)(4) and (5) to read as follows:

§ 9.8 Public notice requirements.

(a) *Purpose.* This section establishes the initial notice procedures to be followed when the Agency proposes any action in or affecting floodplains or wetlands.

* * * * *

(c) * * *

(1) For an action for which an environmental impact statement is being prepared, the Notice of Intent to File an EIS constitutes the early public notice if it includes the information required under paragraph (c)(5) of this section.

(2) For each action having national significance for which notice is being provided, the Agency at a minimum shall provide notice by publication in the **Federal Register** and shall provide notice by mail to national organizations reasonably expected to be interested in the action. * * *

(3) The Agency shall determine whether it has provided appropriate notices, adequate comment periods, and whether to issue cumulative notices (paragraphs (c)(4), (6), and (7) of this section) based on factors which include, but are not limited to:

* * * * *

(v) Anticipated potential impact of the action.

(4) For each action having primarily local importance for which notice is being provided, notice shall be made in accordance with the criteria under paragraph (c)(3) of this section, and shall include, as appropriate:

- (i) Notice through the internet or another comparable method.
- (ii) Notice to Indian tribes when effects may occur on reservations.
- (iii) Information required in the affected State's public notice procedures for comparable actions.
- (iv) Publication in local newspapers.
- (v) Notice through other local media including newsletters.
- (vi) Notice to potential interested community organizations.
- (vii) Direct mailing to owners and occupants of nearby or affected property.
- (viii) Posting of notice on and off site in the area where the action is to be located.
- (ix) Public hearing.

(5) The notice shall:

- (i) Describe the action, its purposes, and a statement of the intent to carry out an action affecting or affected by a floodplain or wetland;
- (ii) Based on the factors in paragraph (c)(3) of this section, include a map of

the area and other identification of the floodplain and/or wetland areas which is of adequate scale and detail; alternatively, FEMA may state that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information or may provide a link to access the map online;

(iii) Based on the factors in paragraph (c)(3) of this section, describe the type, extent, and degree of hazard involved and the floodplain or wetland values present; and

(iv) Identify the responsible official or organization for implementing the proposed action, and from whom further information can be obtained.

* * * * *

- 10. Amend § 9.9 by:
 - a. Revising paragraphs (a)(1), (b)(2), and (c)(1) through (4);
 - b. Adding paragraph (c)(5);
 - c. Revising paragraphs (d), (e)(1)(i), (iii), and (iv), (e)(2) introductory text, (e)(3) introductory text, and (e)(4); and
 - d. Lifting the suspension of paragraph (e)(6) and removing the paragraph.

The revisions and additions read as follows:

§ 9.9 Analysis and reevaluation of practicable alternatives.

(a) * * * *

(1) This section expands upon the directives set out in § 9.6 of this part in order to clarify and emphasize the requirements to avoid floodplains and wetlands unless there is no practicable alternative.

* * * * *

(b) * * *

(2) Alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain or wetlands. In developing the alternative actions, the Agency shall use, where possible, natural systems, ecosystem processes, and nature-based approaches; and

* * * * *

(c) * * *

- (1) Natural environment (including, but not limited to topography, habitat, hazards, when applicable);
- (2) Social concerns (including, but not limited to aesthetics, historical and cultural values, land patterns, when applicable);
- (3) Economic aspects (including, but not limited to costs of space, technology, construction, services, relocation, when applicable);
- (4) Legal constraints (including, but not limited to deeds and leases, when applicable); and
- (5) Agency authorities.

(d) * * *

(1) The Agency shall not locate the proposed action in the floodplain as established by § 9.7(c) or in a wetland if a practicable alternative exists outside the floodplain or wetland.

(2) If no practicable alternative exists outside the floodplain or wetland, in order to carry out the action the floodplain or wetland must itself be a practicable location in light of the review required in this section.

(e) * * *

(1) * * *

(i) The action is still practicable at a floodplain or wetland site, considering the flood risk and the ensuing disruption of natural values;

* * * * *

(iii) The scope of the action can be limited to increase the practicability of previously rejected non-floodplain or wetland sites and alternative actions; and

(iv) Harm to or within the floodplain can be minimized using all practicable means.

(2) Take no action in a floodplain unless the importance of the floodplain site clearly outweighs the requirements to:

* * * * *

(3) Take no action in a wetland unless the importance of the wetland site clearly outweighs the requirements to:

* * * * *

(4) In carrying out this balancing process, give the factors in paragraphs (e)(2) and (3) of this section great weight.

* * * * *

■ 11. Amend § 9.10 by revising paragraph (a), the second sentence of paragraph (b), and paragraphs (c) and (d) to read as follows:

§ 9.10 Identify impacts of proposed actions.

(a) This section ensures that the effects of proposed Agency actions are identified.

(b) * * * Such identification of impacts shall be to the extent necessary to comply with the requirements of this part to avoid floodplain and wetland locations unless they are the only practicable alternatives to minimize harm to and within floodplains and wetlands.

(c) This identification shall consider whether the proposed action will result in an increase in the useful life of any structure or facility in question, maintain the investment at risk and exposure of lives to the flood hazard or forego an opportunity to restore the natural and beneficial values served by floodplains or wetlands.

(d) In the review of a proposed or alternative action, the Regional Administrator shall consider and evaluate: impacts associated with modification of wetlands and floodplains regardless of its location; additional impacts which may occur when certain types of actions may support subsequent action which have additional impacts of their own; adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain and wetland values; and the three categories of factors listed below:

(1) *Flood hazard-related factors.* These include, but are not limited to, the factors listed in § 9.7(b)(3);

(2) *Natural values-related factors.* These include, but are not limited to: water resource values, as in storing and conveying floodwaters, maintaining water quality, and groundwater recharge; living resource values, as in providing habitats and enhancing biodiversity for fish and wildlife and plant resources; cultural resource values, as in providing open space, natural beauty, recreation, scientific study, historical and archaeological resources, and education; and cultivated resource values, as in creating rich soils for agriculture, aquaculture, and forestry.

(3) *Factors relevant to a proposed action's effects on the survival and quality of wetlands.* These include, but are not limited to: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

- 12. Amend § 9.11 by:
- a. Revising paragraphs (a) and (c)(1);
- b. Revising the first sentence of paragraph (d) introductory text and revising paragraphs (d)(1) introductory text, (d)(2) through (4), (d)(5) introductory text, and (d)(9);
- c. Lifting the suspension of paragraph (e)(4) and removing paragraph (e); and
- d. Redesignating paragraph (f) as paragraph (e) and revising it.

The revisions read as follows:

§ 9.11 Mitigation.

(a) *Purpose.* This section expands upon the directives set out in § 9.6 of this part and sets out the mitigative actions required if the preliminary

determination is made to carry out an action that affects or is in a floodplain or wetland.

* * * * *

(c) * * *

(1) Potential harm to lives and the investment from flooding based on flood elevations as established by § 9.7(c);

* * * * *

(d) *Minimization standards.* The Agency shall apply, at a minimum, the following standards to its actions to comply with the requirements of paragraphs (b) and (c) of this section (except as provided in § 9.5(c), (d), and (g) regarding categories of partial or total exclusion). * * *

(1) There shall be no new construction or substantial improvement in a floodway and no new construction in a coastal high hazard area, except for:

* * * * *

(2) For a structure which is a functionally dependent use or which facilitates an open space use, the following applies: Any construction of a new or substantially improved structure in a coastal high hazard area must be elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the floodplain as established by § 9.7(c). The structure shall be anchored so as to withstand velocity waters and hurricane wave wash.

(3) The following applies to elevation of structures:

(i) There shall be no new construction or substantial improvement of structures unless the lowest floor of the structures (including basement) is at or above the elevation of the floodplain as established by § 9.7(c).

(ii) If the subject structure is nonresidential, instead of elevating the structure, FEMA may approve the design of the structure and its attendant utility and sanitary facilities so that the structure is watertight below the flood elevation with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(iii) The provisions of paragraphs (d)(3)(i) and (ii) of this section do not apply to the extent that FEMA Resilience has granted an exception under § 60.6(b) of this chapter, or the community has granted a variance which the Regional Administrator determines is consistent with § 60.6(a) of this chapter. In a community which

does not have a FEMA regulatory product in effect, FEMA may approve a variance from the standards of paragraphs (d)(3)(i) and (ii) of this section, after compliance with the standards of § 60.6(a).

(4) There shall be no encroachments, including but not limited to fill, new construction, substantial improvements of structures or facilities, or other development within a designated regulatory floodway that would result in any increase in flood elevation within the community during the occurrence of the 1 percent annual chance (base) flood discharge. Until a regulatory floodway is designated, no fill, new construction, substantial improvements, or other development shall be permitted within the 1 percent annual chance (base) floodplain unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the 1 percent annual chance (base) flood more than the amount designated by the NFIP or the community, whichever is most restrictive.

(5) Even if an action is a functionally dependent use or facilitates open space uses (under paragraph (d)(1) or (2) of this section) and does not increase flood heights (under paragraph (d)(4) of this section), such action may only be taken in a floodway or coastal high hazard area if:

* * * * *

(9) In the replacement of building contents, materials and equipment, the Regional Administrator shall require as appropriate, flood proofing and/or elevation of the building and/or elimination of such future losses by relocation of those building contents, materials, and equipment outside or above the floodplain as established by § 9.7(c).

(e) *Restore and preserve.* (1) For any action taken by the Agency which affects the floodplain or wetland and which has resulted in, or will result in, harm to the floodplain or wetland, the Agency shall act to restore and preserve the natural and beneficial values served by floodplains and wetlands.

(2) Where floodplain or wetland values have been degraded by the proposed action, the Agency shall identify, evaluate, and implement measures to restore the values.

(3) If an action will result in harm to or within the floodplain or wetland, the Agency shall design or modify the action to preserve as much of the natural and beneficial floodplain and wetland values as is possible.

- 13. Amend § 9.12 by:
 - a. Redesignating paragraphs (d) introductory text and (d)(1) through (6) as paragraphs (d)(1) introductory text and (d)(1)(i) through (vi), respectively; and

- c. Designate the undesignated text after newly redesignated paragraph (d)(1)(vi) as paragraph (d)(2) and revise it.

The revision reads as follows:

§ 9.12 Final public notice.

* * * * *

(d) * * *

(2) When a damaged structure or facility is already being repaired by the State or local government at the time of the project application, the requirements of Steps 2 and 7 (§ 9.8 and this section) may be met by a single notice. Such notice shall contain all the information required by both sections.

- 14. Revise § 9.13 to read as follows:

§ 9.13 Particular types of temporary housing.

(a) This section sets forth the procedures whereby the Agency will provide certain specified types of temporary housing at a private, commercial, or group site.

(b) Prior to providing the temporary housing described in paragraph (a) of this section, the Agency shall comply with the provisions of this section. For temporary housing not enumerated above, the full 8-step process (see § 9.6) applies.

(c) The actions described in paragraph (a) of this section are subject to the following decision-making process:

(1) The temporary housing action shall be evaluated in accordance with the provisions of § 9.7 to determine if it is in or affects the 1 percent annual chance (base) floodplain or wetland.

(2) No temporary housing unit may be placed on a site in a floodway or coastal high hazard area.

(3) An individual or family shall not be housed in the 1 percent annual chance (base) floodplain or wetland unless the Regional Administrator has complied with the provisions of § 9.9 to determine that such site is the only practicable alternative. The following factors shall be substituted for the factors in § 9.9(c) and (e)(2) through (4):

- (i) Speedy provision of temporary housing;
- (ii) Potential flood risk to the temporary housing occupant;
- (iii) Cost effectiveness;
- (iv) Social and neighborhood patterns;
- (v) Timely availability of other housing resources; and
- (vi) Potential harm to the floodplain or wetland.

(4) For temporary housing units at group sites, Step 4 of the 8-step process shall be applied in accordance with § 9.10.

(5) An individual or family shall not be housed in a floodplain or wetland (except in existing resources) unless the Regional Administrator has complied with the provisions of § 9.11 to minimize harm to and within floodplains and wetlands. The following provisions shall be substituted for the provisions of § 9.11(d) for temporary housing units:

(i) No temporary housing unit may be placed unless it is elevated to the fullest extent practicable up to the base flood elevation and adequately anchored.

(ii) No temporary housing unit may be placed if such placement is inconsistent with the criteria of the NFIP (44 CFR parts 59 and 60) or any more restrictive Federal, State, or local floodplain management standard. Such standards may require elevation to the base flood elevation in the absence of a variance.

(iii) Temporary housing units shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill where practicable.

(iv) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(A) Where appropriate, integrate all of its proposed actions in placing temporary housing units for temporary housing in floodplains into existing flood warning or preparedness plans and ensure that available flood warning time is reflected;

(B) Provide adequate access and egress to and from the proposed site of the temporary housing unit; and

(C) Give special consideration to the unique hazard potential in flash flood and rapid-rise areas.

(6) FEMA shall comply with Step 2 Early Public Notice (§ 9.8(c)) and Step 7 Final Public Notice (§ 9.12). In providing these notices, the emergency nature of temporary housing shall be taken into account.

(7) FEMA shall carry out the actions in accordance with Step 8, ensuring the requirements of this section and the decision-making process are fully integrated into the provision of temporary housing.

(d) The following applies to the permanent installation of a temporary housing unit as part of a sale or disposal of temporary housing:

(1) FEMA shall not permanently install temporary housing units in floodways or coastal high hazard areas. FEMA shall not permanently install a temporary housing unit in floodplains as established by 9.7(c) or wetlands unless there is full compliance with the

8-step process. Given the vulnerability of temporary housing units to flooding, a rejection of a non-floodplain location alternative and of the no-action alternative shall be based on:

(i) A compelling need of the family or individual to buy a temporary housing unit for permanent housing; and

(ii) A compelling requirement to permanently install the unit in a floodplain.

(2) FEMA shall not permanently install temporary housing units in the floodplain as established by § 9.7(c) unless they are or will be elevated at least to the elevation of the floodplain as established by § 9.7(c).

(3) The Regional Administrator shall notify FEMA Resilience of each instance where a floodplain location has been found to be the only practicable alternative for permanent installation of a temporary housing unit.

- 15. Amend § 9.14 by revising paragraphs (a), (b)(4), (5), and (6), (b)(7)(ii) and (iii), and (b)(9) to read as follows:

§ 9.14 Disposal of Agency property.

(a) This section sets forth the procedures whereby the Agency shall dispose of property.

(b) * * *

(4) Identify the potential impacts and support of floodplain and wetland development associated with the disposal of the property in accordance with § 9.10;

(5) Identify the steps necessary to minimize, restore, preserve and enhance in accordance with § 9.11. For disposals, this analysis shall address all four of these components of mitigation where unimproved property is involved, but shall focus on minimization through elevation or floodproofing and restoration of natural values where improved property is involved;

(6) Reevaluate the proposal to dispose of the property in light of its exposure to the flood hazard and its natural values-related impacts, in accordance with § 9.9. This analysis shall focus on whether it is practicable in light of the findings from §§ 9.10 and 9.11 to dispose of the property, or whether it must be retained. If it is determined that it is practicable to dispose of the property, this analysis shall identify the practicable alternative that best achieves the Agency's mitigation responsibility.

(7) * * *

(ii) Properties located inside the floodplain but outside of the floodway and the coastal high hazard area; and

(iii) Properties located in a floodway, regulatory floodway, or coastal high hazard area.

* * * * *

(9) The Agency shall ensure that the applicable mitigation requirements are fully implemented in accordance with § 9.11(c).

* * * * *

■ 16. Amend § 9.16 by revising paragraphs (b) introductory text, (b)(2) through (5), and (c) to read as follows:

§ 9.16 Guidance for applicants.

* * * * *

(b) This shall be accomplished primarily through amendment of all Agency instructions to applicants, and also through contact made by agency staff during the normal course of their activities, to fully inform prospective applicants of:

* * * * *

(2) The decision-making process to be used by the Agency in making the determination of whether to take an action in or affecting floodplains or wetlands as set out in § 9.6;

(3) The practicability analysis as set out in § 9.9;

(4) The mitigation responsibilities as set out in § 9.11;

(5) The public notice and involvement process as set out in §§ 9.8 and 9.12; and

* * * * *

(c) Guidance to applicants shall be provided, where possible, prior to the time of application in order to minimize potential delays in the Agency’s processing of the application due to failure of applicants to follow the provisions in this part.

■ 17. Amend § 9.17 by revising paragraphs (a), (b) introductory text, (b)(3) through (5), (c), and (d) to read as follows:

§ 9.17 Instructions to applicants.

(a) *Purpose.* In accordance with Executive Orders 11988, as amended, and 11990, the Federal executive agencies must respond to a number of floodplain management and wetland protection responsibilities before carrying out any of their activities, including the provision of Federal financial and technical assistance. This section provides notice to applicants for Agency assistance of both the criteria that FEMA is required to follow, and the applicants’ responsibilities under this part.

(b) *Responsibilities of applicants.* Based upon the guidance provided by the Agency under § 9.16, the guidance included in the U.S. Water Resources Council’s Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, and based upon the provisions of the Orders and this part, applicants for Agency assistance shall recognize and reflect in their application:

* * * * *

(3) The practicability analysis as set out in § 9.9;

(4) The mitigation responsibilities as set out in § 9.11;

(5) The public notice and involvement process as set out in §§ 9.8 and 9.12; and

* * * * *

(c) *Provision of supporting information.* Applicants for Agency assistance may be required to provide supporting information relative to the various responsibilities set out in

paragraph (b) of this section as a prerequisite to the approval of their applications.

(d) *Approval of applicants.* Applications for Agency assistance shall be reviewed for compliance with the provisions in this part in addition to the Agency’s other approval criteria.

■ 18. Amend § 9.18 by revising paragraph (a)(1), the second sentence of paragraph (b)(1), and the first sentence of (b)(2) to read as follows:

§ 9.18 Responsibilities.

(a) * * *

(1) Implement the requirements of the Orders and this part. Under §§ 9.2 and 9.6 through 9.13 and 9.15 where a direction is given to the Agency, it is the responsibility of the Regional Administrator.

* * * * *

(b) * * *

(1) * * * When a decision of a Regional Administrator relating to disaster assistance is appealed, FEMA Resilience may make determinations under this part on behalf of the Agency.

(2) Prepare and submit to the Office of Chief Counsel reports to the Office of Management and Budget in accordance with section 2(b) of Executive Order 11988, as amended, and section 3 of Executive Order 11990. * * *

Appendix A to Part 9 [Removed]

■ 19. Remove appendix A to part 9.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

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