

6. Adequacy of Rulemaking Process

Lastly, OMB Memorandum M–21–14 requires agencies to consider, among other things, whether the rulemaking process was procedurally adequate and whether interested parties had a fair opportunity to present contrary facts and arguments. We are soliciting comment on the following:

- Whether there are any other procedural issues pertaining to the January 2021 MCIT rulemaking process.
- If there are other procedural issues, what are those issues and what should CMS do to remedy those issues?
- Should the January 2021 MCIT final rule be amended, rescinded, or further delayed pending review by the CMS or allowed to go into effect?

III. Waiver of Proposed Rulemaking and the 60-Day Public Comment Periods

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment prior to a rule taking effect in accordance with section 1871 of the Act and section 553(b) of the Administrative Procedure Act (APA). Unless there is a statutory exception, section 1871(b)(1) of the Act generally requires the Secretary of the Department of Health and Human Services (the Secretary) to provide for notice of a proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment before establishing or changing a substantive legal standard regarding the matters enumerated by the statute. Similarly, under 5 U.S.C. 553(b) of the APA, the agency is required to publish a notice of proposed rulemaking in the **Federal Register** before a substantive rule takes effect. Section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act usually require a 30-day delay in effective date after issuance or publication of a rule, subject to exceptions. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the advance notice and comment requirement and the delay in effective date requirements. Sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act also provide exceptions from the notice and 60-day comment period and the 30-day delay in effective date. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act expressly authorize an agency to dispense with notice and comment rulemaking for good cause if the agency makes a finding that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest.

We find that notice and comment rulemaking is impracticable,

unnecessary, and contrary to the public interest with respect to the relatively short delay in the effective date of the final MCIT rule announced by this action. The final rule was published in the **Federal Register** on January 14, 2021. Even if the MCIT final rule were to go into effect on March 15, 2021, CMS would be unable to operationalize the program by that date. Because the agency is required to make other decisions, such as benefit category determinations, whether there is an existing payment methodology and whether there is an existing code or establishing code for the MCIT eligible breakthrough device, it would be impracticable to operationalize the MCIT rule on the March 15, 2021 effective date. These operational practicalities leave CMS incapable of implementing the MCIT program on March 15, 2021. Additionally, the higher than anticipated volume of devices receiving FDA breakthrough device designation exponentially complicates the operational concerns that we have identified. Further, public comments highlighted the importance of the agency having the ability to not only cover an FDA-designated breakthrough device expeditiously, but also to be able to have coding and payment levels established at the same time.

It would be impracticable to provide the normal 60-day comment period for such a brief delay in the effective date because the rule would be effective before the public comments could be meaningfully considered. Given the March 15, 2021 effective date for the MCIT final rule, there is not sufficient time to adequately consider advance public comment on this delay and it would interfere with the public's interest in the orderly promulgation and implementation of regulations. We find good cause for dispensing with advance public comment because it is impracticable to provide a meaningful opportunity to comment before extending the effective date of the MCIT rule.

The White House memorandum also recommends that, for rules postponed for further review, agencies consider opening a 30-day comment period to allow interested parties to provide comments about issues of fact, law, and policy raised by those rules, and consider any requests for reconsideration involving such rules. Consistent with this guidance, we are requesting public comments on these topics, as well as the specific questions posed previously. After reviewing comments received in response to this notice, we may determine there is a need to postpone the effective date

further to allow additional time to consider issues of fact, law, and policy or to reconsider the January 2021 MCIT final rule.

IV. Summary

This rule delays the effective date of January 2021 MCIT final rule to May 15, 2021 for further review of the of fact, law, and policy raised by the rule. This rule also invites 30 days of public comment and requests interested parties to provide comments about issues of fact, law, and policy raised by the January 14, 2021 final rule so that CMS can consider any requests for reconsideration involving the rule. We also invite additional public comments on whether the rule should be amended, rescinded, delayed pending further review, or allowed to go into effect.

For the reasons stated previously, we find that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to publish this action without prior notice and comment, and for this action to become effective immediately upon publication in the **Federal Register**.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually.

Norris Cochran,

Acting Secretary, Department of Health and Human Services.

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2021–0003; Internal Agency Docket No. FEMA–8671]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency

Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur. Information identifying the current participation status of a community can be obtained from FEMA's CSB available at www.fema.gov/flood-insurance/work-with-nfip/community-status-book. Please note that per Revisions to Publication Requirements for Community Eligibility Status Information Under the National Flood Insurance Program, notices such as this one for scheduled suspension will no longer be published in the **Federal Register** as of June 2021 but will be available at National Flood Insurance Community Status and Public Notification | FEMA.gov. Individuals without internet access will be able to contact their local floodplain management official and/or State NFIP Coordinating Office directly for assistance.

DATES: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 674-1087. Details regarding updated publication requirements of community eligibility status information under the NFIP can be found on the CSB section at www.fema.gov.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives, new and substantially improved construction, and development in general from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts

adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with NFIP regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date listed in the third column. As of that date, flood insurance will no longer be available in the community. FEMA recognizes communities may adopt and submit the required documentation after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. Their current NFIP participation status can be verified at anytime on the CSB section at fema.gov.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the published FIRM is indicated in the fourth column of the table. No direct federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the

community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

- 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

- 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region 3				
Virginia:				
Greene County, Unincorporated Areas	510200	April 11, 1974, Emerg; September 10, 1984, Reg; March 23, 2021, Susp.	March 23, 2021	March 23, 2021.
Stanardsville, Town of, Greene County	510251	June 19, 1974, Emerg; December 26, 1978, Reg; March 23, 2021, Susp.	.....do	Do.
Region 4				
Kentucky:				
Crestwood, City of, Oldham County	210027	N/A, Emerg; July 27, 2006, Reg; March 23, 2021, Susp.	.....do	Do.
Oldham County, Unincorporated Areas	210185	March 10, 1972, Emerg; August 19, 1987, Reg; March 23, 2021, Susp.	.....do	Do.
Orchard Grass Hills, City of, Oldham County.	210398	N/A, Emerg; November 28, 2007, Reg; March 23, 2021, Susp.	.....do	Do.
Mississippi:				
Bolivar County, Unincorporated Areas ..	280011	May 4, 1973, Emerg; July 17, 1989, Reg; March 23, 2021, Susp.	.....do	Do.
Isola, Town of, Humphreys County	280190	January 14, 1974, Emerg; July 3, 1978, Reg; March 23, 2021, Susp.	.....do	Do.
Moorhead, City of, Sunflower County ...	280166	May 24, 1973, Emerg; April 17, 1978, Reg; March 23, 2021, Susp.	.....do	Do.
Renova, Town of, Bolivar County	280065	July 10, 2012, Emerg; March 21, 2017, Reg; March 23, 2021, Susp.	.....do	Do.
Sharkey County, Unincorporated Areas	280152	May 14, 1973, Emerg; July 17, 1986, Reg; March 23, 2021, Susp.	.....do	Do.
Sunflower, Town of, Sunflower County	280168	May 14, 1973, Emerg; July 17, 1978, Reg; March 23, 2021, Susp.	.....do	Do.
Sunflower County, Unincorporated Areas.	280195	May 4, 1973, Emerg; September 28, 1979, Reg; March 23, 2021, Susp.	.....do	Do.
Washington County, Unincorporated Areas.	280177	May 4, 1973, Emerg; September 3, 1980, Reg; March 23, 2021, Susp.	.....do	Do.
South Carolina:				
Beaufort, City of, Beaufort County	450026	November 27, 1970, Emerg; May 2, 1977, Reg; March 23, 2021, Susp.	.....do	Do.
Bluffton, Town of, Beaufort County	450251	N/A, Emerg; August 24, 1993, Reg; March 23, 2021, Susp.	.....do	Do.
Hardeeville, City of, Beaufort and Jasper Counties.	450113	May 27, 1975, Emerg; September 1, 1987, Reg; March 23, 2021, Susp.	.....do	Do.
Hilton Head Island, Town of, Beaufort County.	450250	October 9, 1970, Emerg; September 12, 1984, Reg; March 23, 2021, Susp.	.....do	Do.
Port Royal, Town of, Beaufort County ..	450028	September 10, 1971, Emerg; April 15, 1977, Reg; March 23, 2021, Susp.	.....do	Do.
Yemassee, Town of, Beaufort and Hampton Counties.	450103	June 17, 1975, Emerg; September 1, 1986, Reg; March 23, 2021, Susp.	.....do	Do.
Region 5				
Michigan:				
Blaine, Township of, Benzie County	260027	N/A, Emerg; October 21, 2009, Reg; March 23, 2021, Susp.	.....do	Do.
Frankfort, City of, Benzie County	260029	October 30, 1974, Emerg; March 18, 1991, Reg; March 23, 2021, Susp.	.....do	Do.
Lake, Township of, Benzie County	260030	July 17, 1974, Emerg; June 5, 1989, Reg; March 23, 2021, Susp.	.....do	Do.
Minnesota:				
Alvarado, City of, Marshall County	270267	April 15, 1975, Emerg; January 16, 1981, Reg; March 23, 2021, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Argyle, City of, Marshall County	270268	April 24, 1974, Emerg; December 15, 1982, Reg; March 23, 2021, Susp.	.....do	Do.
Grygla, City of, Marshall County	270269	May 24, 1974, Emerg; September 30, 1982, Reg; March 23, 2021, Susp.	.....do	Do.
Marshall County, Unincorporated Areas	270638	May 15, 1974, Emerg; July 18, 1983, Reg; March 23, 2021, Susp.	.....do	Do.
Middle River, City of, Marshall County ..	270270	August 22, 1983, Emerg; February 1, 1984, Reg; March 23, 2021, Susp.	.....do	Do.
Newfolden, City of, Marshall County	270271	July 24, 1974, Emerg; June 22, 1984, Reg; March 23, 2021, Susp.	.....do	Do.
Oslo, City of, Marshall County	270272	May 15, 1974, Emerg; September 16, 1982, Reg; March 23, 2021, Susp.	.....do	Do.
Stephen, City of, Marshall County	270273	April 26, 1974, Emerg; September 16, 1982, Reg; March 23, 2021, Susp.	.....do	Do.
Warren, City of, Marshall County	270274	May 15, 1974, Emerg; February 18, 1981, Reg; March 23, 2021, Susp.	.....do	Do.
Region 7				
Iowa:				
Bettendorf, City of, Scott County	190240	February 4, 1972, Emerg; June 1, 1978, Reg; March 23, 2021, Susp.	.....do	Do.
Buffalo, City of, Scott County	190241	September 26, 1974, Emerg; September 17, 1980, Reg; March 23, 2021, Susp.	.....do	Do.
Davenport, City of, Scott County	190242	July 25, 1973, Emerg; March 1, 1978, Reg; March 23, 2021, Susp.	.....do	Do.
Donahue, City of, Scott County	190505	February 10, 1988, Emerg; May 1, 1990, Reg; March 23, 2021, Susp.	.....do	Do.
Eldridge, City of, Scott County	190574	October 30, 1990, Emerg; September 1, 1991, Reg; March 23, 2021, Susp.	.....do	Do.
Le Claire, City of, Scott County	190243	August 8, 1974, Emerg; August 15, 1980, Reg; March 23, 2021, Susp.	.....do	Do.
McCausland, City of, Scott County	190771	N/A, Emerg; August 7, 2012, Reg; March 23, 2021, Susp.	.....do	Do.
Panorama Park, City of, Scott County ..	190506	N/A, Emerg; December 17, 1990, Reg; March 23, 2021, Susp.	.....do	Do.
Princeton, City of, Scott County	190244	July 30, 1974, Emerg; November 1, 1979, Reg; March 23, 2021, Susp.	.....do	Do.
Riverdale, City of, Scott County	190245	July 7, 1975, Emerg; January 5, 1978, Reg; March 23, 2021, Susp.	.....do	Do.
Scott County, Unincorporated Areas	190239	December 30, 1971, Emerg; June 1, 1977, Reg; March 23, 2021, Susp.	.....do	Do.
Walcott, City of, Muscatine and Scott Counties.	190675	July 29, 1998, Emerg; November 7, 2001, Reg; March 23, 2021, Susp.	.....do	Do.
Region 8				
Utah:				
Coalville, City of, Summit County	490135	July 24, 1975, Emerg; January 30, 1984, Reg; March 23, 2021, Susp.	.....do	Do.
Henefer, Town of, Summit County	490136	July 23, 1975, Emerg; May 20, 1980, Reg; March 23, 2021, Susp.	.....do	Do.
Oakley, City of, Summit County	490138	June 11, 1975, Emerg; September 24, 1984, Reg; March 23, 2021, Susp.	.....do	Do.
Park City, City of, Summit County	490139	May 8, 1975, Emerg; July 16, 1987, Reg; March 23, 2021, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Summit County, Unincorporated Areas	490134	June 10, 1975, Emerg; July 17, 1986, Reg; March 23, 2021, Susp.		
Region 10				
Oregon:				
Douglas County, Unincorporated Areas	410059	December 3, 1971, Emerg; December 15, 1978, Reg; March 23, 2021, Susp.	.....do	Do.
Seneca, City of, Grant County	410081	May 22, 1975, Emerg; September 24, 1984, Reg; March 23, 2021, Susp.	.....do	Do.

*Do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Eric J. Letvin,

Deputy Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration—FEMA Resilience, Department of Homeland Security, Federal Emergency Management Agency.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120404257–3325–02; RTID 0648–XA921]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2021 Re-Opening and Subsequent Closure of the Commercial Longline Fishery for South Atlantic Golden Tilefish

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

ACTION: Temporary rule; re-opening and subsequent closure.

SUMMARY: NMFS announces the re-opening of the commercial longline component for golden tilefish in the exclusive economic zone (EEZ) of the South Atlantic through this temporary rule. NMFS closed the commercial longline component on February 10, 2021; however, subsequent commercial longline landings data for golden tilefish indicate the commercial longline annual catch limit (ACL) for the 2021 fishing year has not yet been reached. Therefore, NMFS re-opens the commercial longline component for golden tilefish in the South Atlantic EEZ for 11 days beginning on March 20, 2021, to allow the commercial longline ACL to be harvested. After the 11 days,

NMFS closes the commercial longline component to protect the golden tilefish resource.

DATES: This temporary rule is effective from 12:01 a.m. eastern time on March 20, 2021, until 12:01 a.m. eastern time on January 1, 2022.

FOR FURTHER INFORMATION CONTACT:

Mary Vara, NMFS Southeast Regional Office, telephone: 727–824–5305, email: mary.vara@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes golden tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The commercial sector for golden tilefish comprises the longline and hook-and-line components. The commercial golden tilefish ACL is allocated 75 percent to the longline component and 25 percent to the hook-and-line component. The commercial ACL (equivalent to the commercial quota) is 331,740 lb (150,475 kg) gutted weight, and the longline component quota of that ACL is 248,805 lb (112,856 kg) gutted weight (50 CFR 622.190(a)(2)(iii)).

Under 50 CFR 622.193(a)(1)(ii), NMFS is required to close the commercial longline component for golden tilefish when the longline component's commercial quota specified under 50 CFR 622.190(a)(2)(iii) is reached or is projected to be reached by filing a notification to that effect with the Office of the Federal Register. After that closure, golden tilefish may not be commercially fished or possessed by a

vessel with a golden tilefish longline endorsement. NMFS previously determined that the commercial quota for the golden tilefish longline component in the South Atlantic would be reached by February 10, 2021.

Therefore, NMFS published a temporary rule to close the commercial longline component for South Atlantic golden tilefish from February 10, 2021, through the end of the 2021 fishing year (86 FR 8876; February 10, 2021). However, subsequent data indicate that the commercial longline quota for golden tilefish has not been met.

In accordance with 50 CFR 622.8(c), NMFS temporarily re-opens the commercial longline component for golden tilefish on March 20, 2021. The commercial longline component will remain open for 11 days to allow for the commercial longline quota to be reached. The commercial longline component for golden tilefish will be closed from 12:01 a.m. eastern time on March 31, 2021, until January 1, 2022, the start of the next fishing year. NMFS has determined that this re-opening will allow for an additional opportunity to commercially harvest the golden tilefish longline component quota while minimizing the risk of exceeding the commercial sector's ACL.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper and a valid commercial longline endorsement for golden tilefish having golden tilefish on board must have landed and bartered, traded, or sold such golden tilefish prior to 12:01 a.m. eastern time on March 31, 2021. During the subsequent commercial longline closure, golden tilefish may still be commercially harvested using hook-and-line gear while the hook-and-line component is open. However, a vessel with a golden tilefish longline endorsement is not eligible to fish for or possess golden tilefish using hook-and-