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

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2020–BT–TP–0032]

RIN 1904–AE53

Energy Conservation Program: Test Procedure for Commercial and Industrial Pumps; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; correction.

SUMMARY: The U.S. Department of Energy (''DOE'') is correcting a final rule that appeared in the **Federal Register** on March 24, 2023. That document amended test procedures for commercial and industrial pumps. This document corrects a numbering and amendatory error in that final rule.

DATES: Effective April 24, 2023.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Nolan Brickwood, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *Nolan.Brickwood@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

DOE published a final rule in the **Federal Register** on March 24, 2023 (March 2023 final rule), amending the test procedure for commercial and industrial pumps. 88 FR 17934. This correction addresses numbering errors in that final rule.

The amendatory instructions in the March 2023 final rule amended § 431.463 by revising the materials incorporated by reference. The final rule erroneously used duplicative numbering in this section by adding two paragraphs numbered as (g)(3). Further, the amendatory instructions for appendix A to subpart Y of part 431 omitted adding new paragraph E.1.2.1.2.3 to Section III and the amendatory instructions for § 429.59 omitted adding paragraph (a)(2)(iv).

II. Need for Correction

As published, the regulatory text in the March 2023 final rule may result in confusion due to incorrect section references and missing amendatory instructions. Because this final rule would simply correct errors in the text without making substantive changes in the March 2023 final rule, the changes addressed in this document are technical in nature.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the March 2023 final rule remain unchanged for this final rule technical correction. These determinations are set forth in the March 2023 final rule. 88 FR 17968–17972.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), DOE determines that notice and prior opportunity for comment on this rule are unnecessary and contrary to the public interest. Neither the errors nor the corrections in this document affect the substance of the March 2023 final rule or any of the conclusions reached in support of the final rule. For these reasons, DOE also determines that there is good cause to waive the 30-day delay in effective date in 5 U.S.C. 553(d).

Signing Authority

This document of the Department of Energy was signed on April 18, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Correction

In FR Doc. 2023–05635, appearing on page 17934 in the **Federal Register** of Wednesday, March 24, 2023, the following corrections are made:

§ 429.59 [Corrected]

■ 1. On page 17973, in the first column, revise amendatory instruction 2.c to read ''Adding new paragraphs (a)(2)(iv) and (a)(3).;''

§ 431.463 [Corrected]

■ 2. On page 17978, in the first column, redesignate the second instance of paragraph (g)(3) as (g)(4).

§ 431.464 [Corrected]

■ 3. On page 17978, in the third column, revise amendatory instruction 8.d to read ''In section III, revising paragraphs A through D, E.1.2.1.2, E.1.2.1.2.1., E.1.2.1.2.2, and E.1.2.1.2.3.;''

Signed in Washington, DC, on April 18, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–08483 Filed 4–20–23; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245–AH96

Surety Bond Guarantee Program: Removing Obsolete Forms

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The Small Business Administration (SBA) is issuing this direct final rule to remove references to SBA Form 990A in the regulations of the Surety Bond Guarantee (SBG) Program. SBA Form 990A is obsolete and has been discontinued.

DATES: This rule is effective June 20, 2023, without further action, unless significant adverse comment is received by May 22, 2023. If significant adverse comment is received, SBA will publish a timely withdrawal of the Rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN 3245–AH96, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for the rule by RIN number 3245–AH08 and follow the instructions for submitting comments.
- *Mail:* Jermaine Perry, Management Analyst, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street SW, 8th Floor, Washington, DC 20416.
- SBA will post all comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Jermaine Perry, Management Analyst, Office of Surety Guarantees, U.S. Small Business Administration, 409 3rd Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination as to whether to publish the information.

FOR FURTHER INFORMATION CONTACT: Jermaine Perry, Director of Surety Guarantees at (202) 401–8275 or *Jermaine.perry@sba.gov.*

SUPPLEMENTARY INFORMATION:

A. General Information

The U.S. Small Business Administration (SBA) amending its Surety Bond Guaranty (SGB) rules to remove references to *Quick Bond Guarantee Application and Agreement* (SBA Form 990A). Form 990A was integrated with the current version of Form 990 and therefore discontinued. SBA guarantees bid, payment, and performance bonds for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee authorized pursuant to part B of title IV of the Small Business Investment Act of 1958, 15 U.S.C. 694a *et seq.,* gives an authorized surety company (''Surety'') an incentive to provide bonding for small businesses; thereby assisting small businesses in obtaining access to more contracting opportunities. SBA's guarantee is an agreement between SBA and a Surety that SBA will assume a certain percentage of the Surety's loss should a contractor default on the underlying contract. SBA is authorized to guarantee a Surety for a contract up to $6.5 million and, with the certification of a contracting officer of a federal agency, up to $10 million. For more information about SBA's Surety Bond Guarantee Program, see *https://www.sba.gov/funding-programs/surety-bonds.*

SBA issued a Final Rule on Streamlining the Surety Bond Guarantee Program to address regulations that were obsolete, unnecessary, ineffective, or burdensome. That final rule was published in the **Federal Register** on August 8, 2022 (87 FR 48080). SBA also received approval from Office of Management and Budget (OMB) to revise the information collections language in the SBG Program's various forms, which were revised in accordance with that Final Rule, and are set to expire November 25, 2022.

B. Section-by-Section Analysis

Section 115.10. The definition of ''Prior Approval Agreement'' is being revised because Form 990A is being discontinued. The information collected on Form 990A has been integrated into current Form 990. SBA is removing the phrase ''or Quick Bond Guarantee Application and Agreement (SBA Form 990A)'' from the definition of ''Prior Approval Agreement.''

Section 115.30. SBA is removing references to the Quick Bond Guarantee Application and Agreement (SBA Form 990A), which is now discontinued. SBA is amending the remainder of paragraph (d) to remove the references to a choice of form.

Section 115.32. SBA is making a technical amendment to paragraph (b) to remove cross references to § 115.30(d)(1) and (2) because they are redundant.

SBA is amending paragraph (d)(1) to state that SBA Form 990 must be submitted to SBA when a surety notifies SBA of any increase or decrease in the contract or bond amount, even if the original application was on a Form 990A, *Quick Bond Guaranty Application and Agreement* form.

C. Compliance With Executive Orders 12866, 12988, 13132, and 13563, the Congressional Review Act (5 U.S.C. 801–808), the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866.

Executive Order 12988

This direct final rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have preemptive effect or retroactive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism assessment.

Executive Order 13563

Executive Order 13563, Improving Regulation and Regulatory Review (January 18, 2011), requires agencies to adopt regulations through a process that involves public participation, and to the extent feasible, base regulations on the open exchange of information and perspectives from affected stakeholders and the public as a whole. SBA has developed this rule in a manner consistent with these requirements.

Previously, SBA engaged the public in rulemaking to revise, streamline, and modernize the Surety Bond Guaranty program. That final rule published in the **Federal Register** on August 8, 2022 (87 FR 48080). While developing that rule, SBA responded to specific inquiries from government officials and the public regarding changes in response to the notice of proposed rulemaking published in the **Federal Register** on September 23, 2021 (86 FR 52844).

This direct final rule revises some information collection language in SBG Program forms that conformed with the final rule published on August 8, 2022; that is set to expire November 30, 2025.

Congressional Review Act, 5 U.S.C. 801–808

The Office of Management and Budget has determined that this is not a major rule under 5 U.S.C. 804(2).

Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule would not impose new reporting or recordkeeping requirements under the Paperwork Reduction Act. The rule aligns the regulations with the discontinuation of SBA Form 990A, *Quick Bond Application and*

Agreement, currently approved under OMB Control Number 3245–0378.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a proposed rule, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This direct final rule only removes references to SBA Form 990A in the regulations of the Surety Bond Guarantee (SBG) Program, as SBA Form 990A is obsolete and has been discontinued. Accordingly, the Administrator of the SBA hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Justification for Direct Final Rule—Administrative Procedures Act

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act. 5 U.S.C. 553. The Administrative Procedure Act provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest.

SBA is publishing this rule as a direct final rule because public participation is unnecessary. SBA views this as a non-controversial administrative action because it merely removes references to SBA Form 990A in the regulations of the Surety Bond Guarantee (SBG) Program; as SBA Form 990A is obsolete and has been discontinued. This rule will be effective on the date shown in the **DATES** section unless SBA receives significant adverse comment on or before the deadline for comments. Significant adverse comments are comments that provide strong justifications why the rule should not be adopted or for changing the rule. SBA does not expect to receive any significant adverse comments because removes references to a discontinued form, with no extraneous interpretation or other expanded text.

If SBA receives significant adverse comment, SBA will publish a notice in the **Federal Register** withdrawing this rule before the effective date. If SBA receives no significant adverse comments, the rule will be effective 60 days after publication without further notice.

List of Subjects in 13 CFR Part 115

Claims, Reporting and recordkeeping requirements, small businesses, Surety bonds.

For the reasons stated in the preamble, SBA amends 13 CFR part 115 as follows:

PART 115—SURETY BOND GUARANTEE

Subpart A—Provisions for All Surety Bond Guarantees

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110–246, Sec. 12079, 122 Stat. 1651.

■ 2. Amend § 115.10 by revising the definition of ''Prior Approval Agreement'' to read as follows:

§ 115.10 Definitions.

* * * * *

Prior Approval Agreement means the Surety Bond Guarantee Agreement (SBA Form 990) entered into between a Prior Approval Surety and SBA under which SBA agrees to guarantee a specific bond.

* * * * *

■ 3. Amend § 115.30 by revising paragraph (d) to read as follows.

§ 115.30 Submission of Surety's guarantee application.

* * * * *

(d) *Prior Approval Agreement.* To apply for a bond guarantee, a Prior Approval Surety must submit a *Surety Bond Guarantee Agreement* (SBA Form 990) and select one of the following application types:

(1) *Regular.* A Prior Approval Surety may complete and submit a *Surety Bond Guarantee Agreement* (SBA Form 990) indicating a Regular application type to SBA for each Bid Bond or Final Bond. This Form must be approved by SBA prior to the Surety's Execution of the bond. The guarantee fees owed in connection with Final Bonds must be paid in accordance with § 115.32.

(2) *Quick Bond Agreement*—(i) *General procedures.* Except as provided in paragraph (d)(2)(ii) of this section, a Prior Approval Surety may complete and submit a SBA Form 990 indicating a Quick Bond Agreement application type for each Bid Bond or Final Bond. This form must be approved by SBA prior to the Surety's Execution of the bond. The Quick Bond application type is used only for contract amounts that do not exceed $500,000 at the time of application. The guarantee fees owed in connection with Final Bonds must be paid in accordance with § 115.32.

(ii) *Exclusions.* The Quick Bond application type may not be used under the following circumstances:

(A) The Principal has previously defaulted on any contract or has had any claims or complaints filed against it with any court or administrative agency;

(B) Work on the Contract commenced before a bond was Executed;

(C) The time for completion of the Contract exceeds 12 months;

(D) The Contract includes a provision for liquidated damages that exceed $2,500 per day;

(E) The Contract involves asbestos abatement, hazardous waste removal, or timber sales; or

(F) The bond would be issued under a surety bonding line approved under § 115.33.

■ 4. Amend § 115.32 by revising paragraphs (b) and (d)(1) to read as follows:

§ 115.32 Fees and Premiums.

* * * * *

(b) *SBA charge to Principal.* SBA does not charge Principals application or Bid Bond guarantee fees. If SBA guarantees a Final Bond, the Principal must pay a guarantee fee equal to a certain percentage of the Contract amount. The percentage is determined by SBA and is published in Notices in the **Federal Register** from time to time. The Principal's fee is rounded to the nearest dollar and is to be remitted to SBA with the form submitted under § 115.30(d). See paragraph (d) of this section for additional requirements when the Contract amount changes.

* * * * *

(d) * * *

(1) *Notification and approval.* The Prior Approval Surety must notify SBA of any increases or decreases in the Contract or bond amount that aggregate 25% or $500,000 of the original contract or bond amount, whichever is less, as soon as the Surety acquires knowledge of the change. Whenever the original bond amount increases as a result of a single change order of at least 25% or $500,000 of the original contract or bond amount, whichever is less, the prior written approval of such increase by SBA is required on a supplemental Prior Approval Agreement and is conditioned upon payment by the Surety of the increase in the Principal's

guarantee fee as set forth in paragraph (d)(2) of this section. In notifying SBA of any increase or decrease in the Contract or bond amount, the Prior Approval Surety must use SBA Form 990 and select the application type that it used in applying for the original bond guarantee.

* * * * *

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–08458 Filed 4–20–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 121

RIN 3245–AH87

Affiliation and Lending Criteria for the SBA Business Loan Programs; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Final rule; correction.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is correcting a final rule that appeared in the **Federal Register** on April 10, 2023. The document issued a final rule that amended various regulations governing SBA's 7(a) Loan Program and 504 Loan Program, including regulations on use of proceeds for partial changes of ownership, lending criteria, loan conditions, reconsiderations, and affiliation standards, to expand access to capital to small businesses and drive economic recovery.

DATES: Effective May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Dianna Seaborn, Director, Office of Financial Assistance, Office of Capital Access, Small Business Administration, at (202) 205–3645 or *Dianna.Seaborn@sba.gov.* The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION: In FR Doc. 2023–07173 appearing on page 21074 in the **Federal Register** on Monday, April 10, 2023, the following correction is made:

§ 120.193 [Corrected]

■ 1. On page 21085, in the right column, instruction 5 is corrected to read ''5. Amend § 120.193 by revising the last sentence and by adding two sentences at the end of the section to read as follows:''

Dated: April 17, 2023.

Dianna Seaborn,

Director, Office of Financial Assistance.

[FR Doc. 2023–08396 Filed 4–20–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1680; Airspace Docket No. 22–ASO–30]

RIN 2120–AA66

Revocation of Class E Airspace; Liberty, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Class E airspace extending upward from 700 feet above the surface for Causey Airport, Liberty, NC, as all instrument approaches to the airport have been canceled.

DATES: Effective 0901 UTC, August 10, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval helps and guidelines are available on the website. It is available 24 hours a day, 365 days a year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.federalregister.gov.*

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it removes airspace in Liberty, NC, as IFR operations no longer exist for Causey Airport.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–1680 in the **Federal Register** (88 FR 7654, February 6, 2023), to remove Class E airspace extending upward from 700 feet above the surface for Causey Airport, Liberty, NC, as all instrument approaches to the airport have been canceled.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will subsequently be published in FAA Order JO 7400.11.

Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1 annually. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates will subsequently be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by removing Class E airspace extending upward from 700 feet above the surface for Causey Airport, Liberty, NC, as there are no longer any instrument approaches into the airport. Therefore, Class E airspace is no longer needed.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances warrant the preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Liberty, NC [Revoked]

Issued in College Park, Georgia, on April 17, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–08395 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1613; Airspace Docket No. 22–ASO–27]

RIN 2120–AA66

Amendment of Class D and Class E Airspace, Key West, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a typographical error in the final rule published in the **Federal Register** on March 31, 2023, amending Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace at Key West International Airport and Key West Naval Air Station (NAS), FL.

DATES: Effective 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Jennifer Ledford, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; Telephone (404) 305–5649.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (88 FR 19220, March 31, 2023) for Doc. No. FAA–2022–1613, amending Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface at Key West International Airport and Key West NAS, FL. In the Class D legal description for Key West NAS, FL, there is a typographical error where ''by'' is used instead of ''be.'' This action corrects this error by replacing the word ''by'' with the word ''be'' in the Class D airspace legal description for Key West NAS, FL.

Class D and Class E airspace designations are published in Paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11G dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will subsequently be published in FAA Order JO 7400.11G.

Correction to the Final Rule

■ Accordingly, pursuant to the authority delegated to me, in the final rule published in the **Federal Register** of March 31, 2023 (88 FR 19220), on page 19221, in the third column, the amendment of Class D airspace for Key West NAS, FL, is corrected as follows:

§ 71.1 [Corrected]

* * * * *

ASO FL D Key West NAS, FL [Amended]

Key West NAS, FL
(Lat. 24°34′29″ N, long. 81°41′12″ W)
Key West International Airport
(Lat. 24°33′22″ N, long. 81°45′36″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Key West NAS, excluding that airspace within the Key West International Airport Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will be continuously published in the Chart Supplement.

Issued in College Park, Georgia, on April 17, 2023.

Andreese C. Davis,

Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2023–08372 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DOD–2022–OS–0016]

RIN 0790–AK51

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Direct final rule.

SUMMARY: The Department of Defense (DoD or Department) is amending its Privacy Program regulation to add four routine uses to its list of blanket routine uses. These new blanket routine uses will support necessary information sharing from DoD Privacy Act systems of records in the event of a data breach, and support sharing with other government agencies for counterterrorism purposes. This rule is being published as a direct final rule as the Department does not expect to receive any adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published.

DATES: This rule is effective May 31, 2023 unless comments are received that would result in a contrary determination. Comments will be accepted on or before May 22, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods.

- *Federal eRulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

- *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or Regulatory Identifier Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Fletcher, *OSD.DPCLTD@mail.mil,* (703) 571–0080.

SUPPLEMENTARY INFORMATION: A ''routine use'' is defined in the Privacy Act of 1974 as ''with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.'' *See* 5 U.S.C. 552a(a)(7). Routine uses are included in individual agency Privacy Act system of records notices (SORNs) to allow the agency to disclose records from a particular system of records to individuals or entities in accordance with the terms of the routine use. Some agencies have established a set of routine uses that apply to a wide array of published agency SORNs, sometimes referred to as blanket routine uses. Their purpose is to provide consistent information sharing authority across the SORNs for common or non-controversial purposes. Examples of typical blanket routine uses are ones that allow agencies to share information with members of Congress inquiring on behalf of a constituent, with the Department of Justice when litigation arises, and with agency contractors for purposes outlined in the contract. New or altered routine uses, including blanket routine uses, must be published in the **Federal Register** at least 30 days before any records may be disclosed pursuant to the terms of the routine use.

In addition to the specific routine uses established in each DoD SORN, DoD has published blanket routine uses that are applicable to a wide array of DoD systems of records. In order for the blanket routine uses to apply to a specific system of records, the DoD SORN must indicate that the blanket routine uses apply to that system. DoD's blanket routine uses are located in Appendix A to 32 CFR part 310.

This rule adds four new blanket routine uses to Appendix A. The first two blanket routine uses support information sharing in the event of a data breach to respond, remediate, or notify agencies, entities, and persons of the breach, or support other agencies in handling the breach. These routine uses are recommended for all agencies in guidance issued by the Office of Management and Budget (OMB). See OMB Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information,'' January 3, 2017, available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-12_0.pdf.* The third blanket routine use supports information sharing of terrorism, homeland security, or law enforcement information from a DoD system of records to other domestic and international agencies for counterterrorism purposes. The fourth blanket routine use supports the Inspector General Act of 1978, as amended, to allow disclosures to perform the functions of Inspectors General in government.

This rule is being published as a direct final rule as the Department does not expect to receive any significant adverse comments concerning the addition of these four blanket routine uses. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective ten days after the comment period expires.

For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action under these Executive Orders.

Congressional Review Act (5 U.S.C. 804(2))

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DoD will submit a

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the **Federal Register**, whichever is later. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

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

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

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is concerned only with the administration of Privacy Act systems of records within the DoD. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. 3501 et seq.)

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local, and Tribal governments; and other persons resulting from the collection of information by or for the Federal Government. The Act requires agencies obtain approval from the Office of Management and Budget before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

Executive Order 13132, ''Federalism''

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

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on one or more Indian Tribes, preempts Tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian Tribes. This rule will not have a substantial effect on Indian Tribal governments.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDMENT OF INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Appendix A to 32 CFR part 310 is amended by adding blanket routine uses O, P, Q, and R to read as follows:

Appendix A to Part 310—DOD Blanket Routine Uses

* * * * *

O. Routine Use—Data Breach Response and Remediation

A record from a system of records maintained by DoD or a Component may be disclosed to appropriate agencies, entities, and persons when (1) the Component suspects or has confirmed that there has been a breach of the system of records; (2) the Component has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Component's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

P. Routine Use—Data Breach Inter-Agency Assistance

A record from a system of records maintained by DoD or a Component may be disclosed to another Federal agency or Federal entity, when DoD or the Component determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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.

Q. Routine Use—Agency Sharing To Support Counterterrorism

A record from a system of records maintained by a Component consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(4)), homeland security information (6 U.S.C. 482(f)(1)), or law enforcement information (Guideline 2 Report attached to White House Memorandum, ''Information Sharing Environment,'' November 22, 2006) may be disclosed to a Federal, State, local, Tribal, territorial, foreign governmental and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies for the detection, prevention, disruption, preemption, and mitigation of the effects of terrorist activities against the territory, people, and interests of the United States of America as contemplated by the Intelligence Reform and Terrorism Protection Act of 2004 (Pub. L. 108–458) and Executive Order 13388 (October 25, 2005).

R. Routine Use—Office of Inspector General

A record from a system of records maintained by DoD or a Component may be disclosed to another Federal, State, or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General, in conducting an audit, investigation, inspection, evaluation, or some other review as authorized by the Inspector General Act of 1978, as amended.

Dated: April 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08475 Filed 4–20–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2022–OS–0066]

RIN 0790–AL08

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense (Department or DoD) is issuing a final rule to amend its regulations to exempt

portions of the system of records titled DoD–0010, ''Counterintelligence Functional Services'' from certain provisions of the Privacy Act of 1974 because of national security, law enforcement, and employment suitability mission areas.

DATES: This rule is effective on May 22, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

SUPPLEMENTARY INFORMATION:

Discussion of Comments and Changes

This proposed rule published in the **Federal Register** (87 FR 37774) on June 24, 2022. Comments were accepted for 60 days until August 23, 2022. No comments were received.

I. Background

In finalizing this rule, DoD is exempting portions of this system of records titled DoD–0010, ''Counterintelligence Functional Services,'' from certain provisions of the Privacy Act. This system of records covers DoD's maintenance of records about individuals to protect against espionage, intelligence activities, sabotage, or assassinations conducted by foreign entities or international terrorists. Counterintelligence Functional Services (CIFS) activities support the following Counterintelligence (CI) missions: countering espionage; countering international terrorism; and providing support to force protection, research, development, and acquisition activities. CIFS also include assessments of CI incidents and DoD-required CI reporting conducted throughout the DoD enterprise. Not included in this system of records are records concerning CI investigations or CI collection activities.

II. Privacy Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including the provisions providing individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemption. The DoD is amending 32 CFR part 310 to add a new Privacy Act exemption rule for this system of records. The DoD is adding an exemption for this system of records because some of its records may contain investigatory material compiled for classified national security information; law enforcement purposes; and employment suitability determinations pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5). The DoD is claiming an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain recordkeeping and notice requirements, to avoid, among other harms, frustrating the underlying purposes for which the information was gathered.

Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action under these Executive Orders.

Congressional Review Act (5 U.S.C. 804(2))

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the **Federal Register**, whichever is later. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

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

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

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is concerned only with the administration of Privacy Act systems of records within the DoD. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. 3501 et seq.)

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local, and Tribal governments; and other persons resulting from the collection of information by or for the Federal Government. The Act requires agencies obtain approval from the Office of Management and Budget before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

Executive Order 13132, ''Federalism''

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

Executive Order 13175, ''*Consultation and Coordination With Indian Tribal Governments*''

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on one or more Indian tribes, preempts Tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian Tribes. This rule will not have a substantial effect on Indian Tribal governments.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDEMENT OF INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Section 310.13 is amended by adding paragraph (e)(8) to read as follows:

§ 310.13 Exemptions for DoD-wide systems.

* * * * *

(e) * * *

(8) *System identifier and name.* DoD–0010, ''Counterintelligence Functional Services''

(i) *Exemptions.* This system of records is exempt from 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Privacy Act.

(ii) *Authority.* 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) *Subsections (c)(3), (d)(1), and (d)(2)—(1) Exemption (k)(1).* Records in this system of records may contain information concerning individuals that is properly classified pursuant to executive order. Application of exemption (k)(1) for such records may be necessary because access to and amendment of the records, or release of the accounting of disclosures for such records, could reveal classified information. Disclosure of classified records to an individual may cause damage to national security.

(*2*) *Exemption (k)(2).* Records in this system of records may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Application of exemption (k)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could: inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement or prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records or the accounting of records to avoid criminal penalties, civil remedies, or disciplinary measures; interfere with a civil or administrative action or investigation by allowing the subject to tamper with witnesses or evidence, and to avoid detection or apprehension, which may undermine the entire investigatory process; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD's ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(*3*) *Exemption (k)(5).* Records in this system of records may contain information concerning investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. In some cases, such records may contain information pertaining to the identity of a source who furnished information to the Government under an express promise the source's identity would be held in confidence (or prior to the effective date of the Privacy Act, under an implied promise). Application of exemption (k)(5) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could identify these confidential sources who might not have otherwise come forward to assist the Government; hinder the Government's ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others. Amendment of such records could also impose a highly impracticable administrative burden by requiring investigations to be continuously reinvestigated.

(B) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent an exemption is claimed from subsections (d)(1) and (2).

(C) *Subsection (e)(1).* In the collection of information for investigatory or law enforcement purposes, it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of the investigation or adjudication. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity for effective investigation and adjudication can be assessed. Collection of such information permits more informed decision-making by the Department when making required suitability, eligibility, fitness, and credentialing determinations. Accordingly, application of exemptions (k)(1), (k)(2), and (k)(5) may be necessary.

(D) *Subsections (e)(4)(G) and (H).* These subsections are inapplicable to the extent exemption is claimed from subsections (d)(1) and (2). Because portions of this system are exempt from the individual access and amendment provisions of subsection (d) forthe reasons noted above, DoD is not required to establish requirements, rules, or procedures with respect to such access or amendment provisions. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access,view, and seek to amend records pertaining to themselves in the system would potentially reveal classified information, undermine investigative efforts, reveal the identities of witnesses, potential witnesses, and confidential informants, and impose an undue administrative burden by requiring investigations to be continually reinvestigated. Accordingly, application of exemptions (k)(1), (k)(2), and (k)(5) may be necessary.

(E) *Subsection (e)(4)(I).* To the extent that this provision is construed to require more detailed disclosure than the broad, general information currently published in the system notice concerning the categories of sources of the records in the system, an exemption from this provision is necessary to protect classified information, other national security information, and the confidentiality of national security, law enforcement, and investigatory sources of information, and to protect the privacy and physical safety of witnesses and informants. Accordingly, application of exemptions (k)(1), (k)(2) and (k)(5) may be necessary.

(F) *Subsection (f).* The agency's rules are inapplicable to those portions of the system that are exempt. Accordingly,

application of exemptions (k)(1), (k)(2), and (k)(5) may be necessary.

(iv) *Exempt records from other systems.* In the course of carrying out the overall purpose for this system, exempt records from other systems of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

* * * * *

Dated: April 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08468 Filed 4–20–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

32 CFR Part 555

[Docket ID: COE–2022–0001]

RIN 0710–AB43

Corps of Engineers, Research and Development, Laboratory Research and Development and Tests, Work for Others

AGENCY: U.S. Army Corps of Engineers (Corps), Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule removes the U.S. Army Corps of Engineers' part titled, ''Corps of Engineers, Research and Development, Laboratory Research and Development and Tests, Work for Others.'' This part is redundant with existing internal agency guidance and otherwise covers internal agency operations that have no public compliance component or adverse public impact. Therefore, this part can be removed from the Code of Federal Regulations (CFR).

DATES: This rule is effective on April 21, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Niles at (202) 761–1849 or by email at *Anthony.R.Niles@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This final rule removes the Corps' regulation at 32 CFR part 555, titled ''Corps of Engineers, Research and Development, Laboratory Research and Development and Tests, Work for Others.'' Part 555 defines and establishes policies and procedures applicable to the performance of research, development, and tests at the Corps' laboratory installations for other governmental and private agencies and organizations. Removing this part reduces confusion for the public as well as for the Corps regarding the current policies that govern performance of research, development, and tests at Corps facilities for other governmental and private agencies and organizations. Part 555 refers to an old structure of independent laboratories within the Corps and to facilities that no longer exist. The new updated internal agency policy refers to the more recent organization of the Engineer Research and Development Center (ERDC) and new laboratories and centers since publication of Part 555.

For public accessibility purposes, the updated internal agency policy on this topic may be found in various sources. The applicability content covering the organizational elements and description of services that apply to research and developments and tests to be performed for other organizations are included in the strategy document providing the Corps' overarching approach to research and development, titled ''USACE Research and Development Strategy'' (Strategy), which published in November 2021 (available at *https://www.erdc.usace.army.mil/About/USACE-Research-and-Development-Strategy-2022/*); in Engineer Circular 70–2–38, ''Civil Works Research, Development, and Technology Process,'' which published on May 31, 2021 (available at *https://www.publications.usace.army.mil/LinkClick.aspx?fileticket=eyI9_Sz-9Ng%3d&tabid=16426&portalid=76&mid=31387*); and in the Engineer Regulation 1140–1–211 (ER 1140–1–211), ''Reimbursable Services,'' which published on September 10, 2020 (available at *https://www.publications.usace.army.mil/LinkClick.aspx?fileticket=DKAjxGGNI5w%3d&tabid=16441&portalid=76&mid=43546*). The policy content covering the terms and conditions of services, agreements, and funds for services are covered in ER 1140–1–211, and the policies, procedures and responsibilities for support agreements are covered in the DoD Instruction 4000.19, ''Support Agreements,'' which published on December 16, 2020 (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/400019p.pdf?ver=AgPBMZwTey4t8dkHDRM4ng%3D%3D*). The terms of providing reimbursement for services content are discussed in ER 1140–1–211. Additional content on this topic can be found in the Engineer Regulation 70–1–5, ''Corps of Engineers Research and Development Program,'' which published on December 31, 1989 (available at *https://www.publications.usace.army.mil/Portals/76/Publications/EngineerRegulations/ER_70-1-5.pdf*).

The solicitation of public comment for this removal is unnecessary because the rule is out-of-date and has no public compliance component or adverse public impact. Because the regulation does not place a burden on the public, its removal does not provide a reduction in public burden or costs. This rule is not significant under Executive Order 12866, titled ''Regulatory Planning and Review.''

List of Subjects in 32 CFR Part 555

Engineers Corps, Intergovernmental relations, Laboratories, Research.

PART 555—[REMOVED]

■ Accordingly, for the reasons stated in the preamble and under the authority of 5 U.S.C. 301, the Corps removes 32 CFR part 555.

Approved by:

Michael L. Connor,

Assistant Secretary of the Army (Civil Works)

[FR Doc. 2023–08399 Filed 4–20–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2023–0338]

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 the 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 15, 2023.

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 15, 2023. 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 [DATUM: NAD 83].

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: April 17 2023.

Brad W. Kelly,

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

[FR Doc. 2023–08453 Filed 4–20–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ70

Medical Benefits Package; Chiropractic Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations to add chiropractic services to the definitions of medical services and preventive care. VA will further revise the definition of medical services to include rehabilitative services consistent with its statutory definition and to reflect changes made in other VA medical regulations and in prior legislation not previously codified. The amendments will make the amended regulations consistent with current practices, prior changes in law and other VA medical regulations, and changes in law made by the Consolidated Appropriations Act, 2018. These amendments will not substantively change the current administration of medical benefits to veterans.

DATES: This rule is effective May 22, 2023.

FOR FURTHER INFORMATION CONTACT: Anthony Lisi, D.C., Director, Veterans Health Administration Chiropractic Service, Rehabilitation and Prosthetic Services (12RPS3), 810 Vermont Ave. NW, Washington, DC 20420, (203) 932–5711, ext. 5341. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 21, 2021, VA published a proposed rule in the **Federal Register** (86 FR 58237) that would revise its medical regulations to explicitly include chiropractic and rehabilitative care. VA provided a 60-day comment period, which ended on December 20, 2021. VA received six comments on the proposed rule.

Section 1710 of title 38 of the United States Code (U.S.C.) requires VA to furnish hospital care and medical services which the Secretary determines to be needed for eligible veterans. The term medical services is defined in 38 U.S.C. 1701(6) to include medical examination, treatment, and rehabilitation, and further lists particular types of medical services in section 1701(6)(A)–(H). Section 245 of Public Law 115–141, the Consolidated Appropriations Act, 2018 (March 23, 2018), amended 38 U.S.C. 1701(6) to add chiropractic services to the definition of medical services, amended section 1701(8) to include chiropractic services to the definition of rehabilitative services, and amended section 1701(9) to add chiropractic examinations and services to the definition of preventive services. VA regulates definitions for certain terms, to include medical services, in title 38 Code of Federal Regulations (CFR) 17.30, and regulates the provision of hospital care and medical services in 38 CFR 17.38. This final rule amends 38 CFR 17.30 and 17.38, consistent with the proposed rule, to conform to these statutory changes and expressly recognize chiropractic services as medical services.

All six comments—including one submitted by the American Chiropractic Association, the largest professional organization representing chiropractors in the U.S.—expressed support for the rule, and we thank the commenters for their support. While all comments were supportive, four warrant clarification.

One commenter is a chiropractor working with veterans who expressed a personal desire, as well as a desire held by the commenter's patients, to see chiropractic care covered as part of veteran medical benefits. We believe this commenter supported the addition of chiropractic services as part of the medical benefits package in proposed § 17.38(a)(2)(x) but may not have understood that chiropractic services have been provided by VA to veterans since 2000. We clarify for the commenter, and reiterate from the proposed rule, that the proposed changes are intended to expressly recognize chiropractic services as medical services available to veterans, making VA regulations consistent with changes in law made by the Consolidated Appropriations Act of 2018 as well as with current VA practice. The proposed changes will not affect the administration of medical benefits, which currently include chiropractic services. We do not make any changes based on this comment.

While voicing support for the proposed rule, one commenter stated the change does not go far enough, because it does not include other ''whole-person'' medical treatments and

methodologies such as osteopathic manipulation, physical therapy, and massage therapy. The commenter recommended listing these three modalities alongside chiropractic care as covered preventive care services under 38 CFR 17.38(a)(2)(x). VA embraces whole health by offering various complimentary and integrative health approaches and promoting veteran self-care and well-being. However, the primary purpose of this rulemaking is to conform § 17.38 with the statutory changes made to 38 U.S.C. 1701 in the Consolidated Appropriations Act, 2018, and not to conform VA regulations to reflect an exhaustive list of all treatment modalities that may be available as either basic or preventive care in the medical benefits package in § 17.38(a). We clarify for the commenter, however, that the additional modalities mentioned by the commenter are currently authorized forms of outpatient care for veterans under § 17.38(a)(1)(i), dependent upon factors like provider availability and medical necessity. We do not make any changes from the proposed rule based on this comment.

A supportive comment submitted by a group of graduate students stated a belief that VA currently provides only limited chiropractic services and that the proposed rule would authorize additional chiropractic resources for veterans through the hiring of additional chiropractors. To clarify, the proposed rule did not pose regulatory revisions to increase chiropractic resources or services, but only to conform current regulatory language to the authorizing statutory language and current VA practice. Chiropractic resources are already available at VA medical centers and through the Community Care Program.

In the group comment referenced above, one individual commenter also stated that while they supported the rule and did not find any issue with VA providing chiropractic care prior to the regulations being published and effective, the commenter suggested that, in the future, VA should not authorize new types of treatment or care without first, or simultaneously, publishing a regulation. We thank the commenter for that suggestion. However, in some situations VA is able to administer medically necessary benefits to veterans as soon as they are authorized without having to wait for regulations to be published.

The commenter detailed their own experience serving on active duty and as a veteran receiving health care through VA, and we thank the commenter for their service. We do not make any changes from the proposed rule based on this comment.

One commenter expressed support for making chiropractic services available in nursing homes, a term which could apply to various VA-run and VA-affiliated programs, such as: Community Living Centers, which are VA-run nursing homes; Community Nursing Homes, which are nursing homes owned and operated by commercial providers where VA contracts for beneficiary care; and State Veterans Homes, which are recognized by VA, but owned and operated by the state where they are located. While chiropractic care is available to veterans eligible for the medical benefits package, we note that these services may not be available on-site at each type of nursing home to which the commenter may have been referring.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule as a final rule without changes.

Paperwork Reduction Act

This action does not contain any provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. There would be no material changes to the medical benefits available to veterans. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Assistance Listings

The Assistance Listings numbers and titles for the programs affected by this document are 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.029, Purchase Care Program; 64.049, VHA Community Living Center.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Claims, Day care, Dental health, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on April 14, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, we amend 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding an entry for § 17.30 and revising the entry for § 17.38 to read in part as follows:

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

Section 17.30 is also issued under 38 U.S.C. 1701.

* * * * *

Section 17.38 is also issued under 38 U.S.C. 1701 and 1703.

* * * * *

■ 2. Amend § 17.30 by:
■ a. Revising paragraphs (a) introductory text and (a)(1);
■ b. Redesignating paragraphs (a)(2) and (3) as paragraphs (a)(3) and (4), respectively; and
■ c. Adding new (a)(2) to read as follows:

§ 17.30 Definitions.

* * * * *

(a) *Medical services.* The term *medical services* includes the following:

(1) Medical examination, treatment, and rehabilitative services (as defined in 38 U.S.C. 1701(8)).

(2) Surgical services, dental services and appliances as authorized in §§ 17.160 through 17.166, optometric and podiatric services, chiropractic services, preventive health care services set forth in 38 U.S.C. 1701(9), noninstitutional extended care, and items and services as authorized in §§ 17.3200 through 17.3250.

* * * * *

■ 3. Amend § 17.38 by adding paragraph (a)(2)(x) to read as follows:

§ 17.38 Medical benefits package.

(a) * * *

(2) * * *

(x) Chiropractic services.

* * * * *

[FR Doc. 2023–08298 Filed 4–20–23; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Electronic Indicators for the Mailing of Hazardous Materials

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service revises Publication 52, *Hazardous, Restricted, and Perishable Mail* (Pub 52) to incorporate new requirements, for mailers to use unique service type codes and extra service codes within the tracking barcodes and electronic data submission for package shipments containing hazardous materials (HAZMAT) or dangerous goods (DG). This rule standardizes the acceptance and handling of package shipments containing HAZMAT/DG by collecting electronic data to ensure these items are handled appropriately with regards to the category of HAMZAT/DG contained within the package and to create electronic manifests for the Postal Service's air carrier suppliers. The Postal Service also amends the *Mailing Standards of the United States Postal Service Domestic Mail Manual* (DMM) to alter refund eligibility of Priority Mail Express containing HAZMAT.

DATES: This rule is effective July 9, 2023, except section 323.3 of Pub 52, which will be effective January 21, 2024.

FOR FURTHER INFORMATION CONTACT: Jennifer Cox at (202) 268–2108, Juliaann Hess at (202) 268–7663, or Dale Kennedy at (202) 268–6592.

SUPPLEMENTARY INFORMATION: The Postal Service hereby amends Publication 52, *Hazardous, Restricted, and Perishable Mail* (Pub 52), with the provisions set forth herein. While not codified in Title 39, Code of Federal Regulations (CFR), Publication 52 is a regulation of the Postal Service, and changes to it may be published in the **Federal Register**. 39 CFR 211.2(a)(2). Moreover, Pub 52 is incorporated by reference into *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) section 601.8.1, which is incorporated by reference, in turn, into the Code of Federal Regulations. 39 CFR 111.1, 111.3. Pub 52 is publicly available, in a read-only format, via the Postal Explorer® website at *https://pe.usps.com.* In addition, links to Postal Explorer are provided on the landing page of *USPS.com,* the Postal Service's primary customer-facing website, and on *Postal Pro,* an online informational source available to postal customers.

The following items are clarified in this rule:

- When shipping HAZMAT internationally, dangerous goods (DG) terminology is used rather than HAZMAT.
- HAZMAT and DG are not eligible to be mailed in letter or flat-sized mailpieces.
- These new requirements are in addition to current Pub 52 regulations and do not exempt mailers from complying with existing standards.
- When shipping to Army Post Office (APO), Fleet Post Office (FPO) or Diplomatic Post Office (DPO) destinations, mailers must follow international DG regulations. This mail is only treated as domestic for pricing purposes.
- Packages being sent domestically containing new electronic devices, in original unopened packaging or manufacturer certified new or refurbished devices, that are not required to, and do not bear a lithium battery marking are exempt from applying service type codes and extra service type codes. This exemption does not apply to packages being sent internationally.

These packages must meet the following:

(a) only button cell batteries installed in equipment; or

(b) no more than 4 lithium cells; or

(c) 2 lithium batteries installed in the equipment they operate, (*i.e.,* cell phones, tablets, digital readers, or glucose monitors etc.); or

(d) when there are no more than two mailpieces in a single consignment, per Pub 52, Section 349.

- The **Federal Register** Notice, 87 FR 73459 published on November 30, 2022, required mailers to provide physical separation of HAZMAT/DG from non-HAZMAT/DG packages. Upon full implementation of the electronic indicators on July 9, 2023, mailers may submit a request for a release from the requirement to separate HAZMAT/DG from non-HAZMAT/DG when tendering to the Postal Service. Internal Postal Service data will be utilized to validate compliance with this rule prior to approving customer release of the separation requirement. The requests can be submitted to the Director, Product Classification, 475 L'Enfant Plz. SW, Rm. 4446, Washington, DC 20260–5015.

On November 30, 2022, the Postal Service published a notice of proposed rulemaking (87 FR 73510) requiring mailers to use specific HAZMAT Service Type Codes (STC) within their shipping barcode and to transmit electronic data through a Shipping Services File (SSF) to the Postal Service before, or concurrent with, the tendering of hazardous materials shipments with an original effective date of April 30, 2023. The proposal included Extra Service Codes (ESC) to correspond with the specific category of HAZMAT the Postal Service permits and encouraged adoption of a 2D barcode on shipping labels. In addition, the proposal also included insurance, adult signature over 21, and restricted delivery as the only eligible Extra Service options for shipments of HAZMAT and altered the refund eligibility of Priority Mail Express containing HAZMAT within the DMM.

After review and evaluation of comments received, the following substantiative changes are being incorporated into the final rule:

- Requirement for mailers to incorporate the use of electronic indicators within their tracking barcodes and shipping service files has been moved to July 9, 2023.
- Addition of Signature Confirmation as an approved Extra Service option for use with domestic HAZMAT shipments.

• Application of ESC 857 for all shipments of HAZMAT or DG, in lieu of the previous language indicating only APO, FPO and DPO destinations or mailers utilizing USPS API or Web Tool applications were required to apply ESC 857.

• Optional STCs are only required if one of the applicable Extra Services is selected when shipping domestic HAZMAT.

• Incorporation of 2D barcodes on shipping labels for domestic mailpieces containing HAZMAT will be required on January 21, 2024.

In this final rule, the Postal Service is clarifying:

• ESC 857 is required on all HAZMAT/DG packages.

• HAZMAT mailed to, from, and between APO/FPO/DPO locations must follow international rules for mailing.

• When shipping DG internationally or to APO/FPO/DPO destinations, mailers must use one of the ESCs from the International and APO/FPO/DPO list in addition to ESC 857.

• For domestic shipments, when a category-specific Extra Service Code is used, ESC 857 can be omitted only if there are not enough extra service code fields available for the package details.

• Domestic packages containing new lithium batteries that are not required to display a DOT mark or label, or any other type of text marking are exempt from applying HAZMAT STCs and ESCs if no markings are displayed on the package.

The Postal Service is amending Pub 52 to reflect these changes.

Summary of New Measures

Domestic

The Postal Service has provided a total of 25 STCs for domestic outbound mailpieces containing HAZMAT.

• Mailers are required to apply one of six product specific STCs based upon the shipping product chosen, for example, Priority Mail Express, Priority Mail, or Parcel Select that simply indicates the contents are HAZMAT. This is the minimum information the Postal Service will accept when a mailer ships HAZMAT.

• For mailers shipping HAZMAT with an Extra Service, the appropriate STC is to be used from the 20 additional outbound domestic STCs. The 20 are listed as optional because the mailer is not required to purchase an Extra Service to ship HAZMAT with the Postal Service. Therefore, if the mailer purchases an eligible Extra Service, such as insurance, adult signature over 21, signature confirmation or restricted delivery, one of the 20 applicable product specific STCs must be applied.

For domestic returns, mailers must select one of 15 STCs when shipping HAZMAT.

• Mailers are required to apply one of eight product specific STCs based on the mail shipping product chosen, for example, Priority Mail Express, Priority Mail, or Parcel Select indicating the contents are HAZMAT. This is the minimum information the Postal Service will accept when a mailer ships HAZMAT.

• For mailers shipping HAZMAT returns with the Extra Service of insurance, one of the seven appropriate STCs are to be used. These STCs are not required to be used unless the mailer opts to purchase insurance. Insurance is the only available Extra Service option for Domestic Returns.

Extra Service Codes (ESC)

Domestic, International and APO/FPO/DPO

ESC 857 is required for all domestic and international or APO/FPO/DPO shipments containing HAZMAT/DG.

Domestic ESC

The Postal Service has provided 23 Extra Service Codes (ESC) that indicate the specific category of HAZMAT contained within the package. These are currently optional for use at this time for domestic shipments and mailers are encouraged to adopt and use.

International and APO/FPO/DPO ESC

There are three ESCs required for use if shipping DG to international or APO/FPO/DPO destinations to indicate the specific category of DG contained within the mailpiece.

Two-Dimensional (2D) Barcode

Effective January 21, 2024, the Postal Service will require mailers to add two supplemental GS1-DataMatrix (2D) IMpbs to domestic shipping labels to improve package visibility; one in the address block to the left of the Delivery Address and one in the lower right corner of the shipping label.

Response to Comments

In response to the proposed rule, the Postal Service received seven formal responses to the proposed changes to Pub 52 and no formal responses to the proposed changes to the DMM. The comments received are as follows:

Comment: Several commenters asked how the flight-specific air carrier manifests will convey new HAZMAT information.

Response: The Postal Service is developing the processes for generating flight-specific carrier manifests using this new data. This outcome will be addressed at a later date.

Comment: One commenter asked if shipping papers will be required on each mail piece or if the manifest will have the copies attached.

Response: When shipping papers are required, they will continue to be pursuant to the regulations in Pub 52 and attached to outer packaging of each mailpiece.

Comment: One commenter questioned why the 23 ESCs are optional as they seem to be the reason for this proposal.

Response: At this time, the Postal Service will require the electronic data file to indicate that HAZMAT is contained within the package for domestic packages. The inclusion of the optional ESC will be required in the future for domestic packages containing HAZMAT. International and APO/FPO/DPO packages must include one of the three applicable ESCs when mailing DG.

Comment: One commenter also asked what STC/ESC will apply to the 200 ZIP Codes in the state of Alaska that the Postal Service identifies as ''air transportation only.''

Response: When shipping used, damaged, or defective electronic devices containing or packaged with lithium batteries, to, from, or within the remote Alaskan ZIP Codes listed in Appendix F of Pub 52, mailers should apply ESC 818.

Comment: Several commenters requested that the Postal Service modify the lithium battery ESCs to indicate chemistry and whether a lithium battery is shipped alone, installed in the equipment, or packed with the equipment.

Response: The Postal Service appreciates this valuable feedback but has determined to consider the expansion of the lithium battery ESCs in the future. Adding more complexity to the ESCs at this time could lead to unnecessary confusion in this final rule.

Comment: One commenter recommended that the Postal Service add class 9 miscellaneous and UN3291 Regulated Medical Waste to the ESC codes and make various text changes to the ESC codes.

Response: The ESC listing found in Appendix G of Pub 52 and Pub 199 includes all mailable HAMZAT categories. The list includes ESC 829—ID8000 Consumer Commodity Package, which applies to class 9 miscellaneous materials and ESC 826—Division 6.2 Hazardous Materials, which applies to UN3291.

Comment: Several commenters requested that the Postal Service consider an extension of the April 30, 2023 implementation date.

Response: The Postal Service has considered these requests and determined that delaying implementation until July 9, 2023 is in the best interest of all parties.

Comment: Several commenters suggested that the Postal Service include a reference in the final rule to indicate that recognized DG labels and markings for the six required STCs may not cover all DG items and could result in items being tendered to an air carrier that are ineligible for carriage on an aircraft.

Response: The six STCs apply to domestic HAZMAT whether or not they require Department of Transportation (DOT) or International Air Transport Association (IATA) markings. Certain lithium battery operated devices are not required to display any marks or labels (no more than 4 cells, 2 batteries, *i.e.,* new personal electronic devices in new unopened packaging) and are exempt from the STC/ESC requirements.

Comment: Several commenters suggested that the Postal Service include a reference to the Pipeline Hazardous Materials Safety Administration (PHMSA) because PHMSA promulgates the rules and requirements for certificated air carriers, which are then enforced by the Federal Aviation Administration (FAA).

Response: The Postal Service is mindful that its air carriers may be subject to PHMSA and FAA regulations. In promulgating regulations for the acceptance of HAZMAT/DG in the mail, the Postal Service strives, to the extent possible, to harmonize its rules to PHMSA's requirements. This does not, however, imply that the Postal Service will refrain from further limiting the scope of air eligible HAZMAT/DG. The Postal Service may indeed determine that its processing environment and risk profile are such that greater restrictions are needed. As an illustration, the Postal Service recently imposed regulations on used, damaged, or defective electronic devices by requiring specific text markings prior to accepting them for ground transport and prohibiting them in air transportation.

Comment: Several commenters proposed that the Postal Service add language to clarify that electronic indicators are required in addition to properly marking and labeling DG packages.

Response: The rule does not change the existing Pub 52 requirements to apply appropriate markings and labels when HAZMAT/DG is mailed.

Comment: Several commenters indicated concerns regarding re-used boxes for mailing, especially those with DG markings. One commenter suggested requiring mailers to identify when re-used boxes are being used and not to allow mailers to re-use packages with previous DG markings. Another commenter voiced concern that re-used packaging bearing previous DG marks/labels or remnants thereof, would continue to be accepted by the Postal Service and tendered to air carriers.

Response: In accordance with Pub 52, section 227, the Postal Service will treat any re-used box as though it contains the material indicated by any HAZMAT/DG marks and/or labels on the re-used box if such marks and/or labels are not completely obliterated.

Comment: Several commenters requested that the Postal Service provide detailed information as to what items/ESCs are not air-eligible and acknowledge that carriers may have different rules identifying what is or is not air eligible.

Response: The following ESCs are not eligible for air transportation in domestic mail. 811 Class 1—Toy Propellant/Safety Fuse Package, 812 Hazardous Materials Class 3—Package, 813 Class 7 Radioactive Materials Package (Domestic only), 816 Class 9—Lithium Battery Marked—Ground Only Package, 817 Class 9—Lithium Battery—Returns Package, 822 Division 4.1—Mailable flammable solids and Safety Matches Package, 828 Ground Only Hazardous Materials, 830 Lighters Package, 831 LTD QTY Ground Package, and 832 Small Quantity Provision Package. The ESCs that are required for use when mailing to international or APO/FPO/DPO destinations are eligible for air transportation.

Comment: Several commenters requested that the Postal Service clarify how it will determine which ESCs are air eligible, and which are not.

Response: It is impossible for the Postal Service to list every air carrier's rules. Postal operations will direct, as appropriate, mailable HAZMAT/DG that is air-eligible to air carrier suppliers that accept such specific HAZMAT/DG.

Comment: Several commenters requested that the Postal Service provide further clarity to ensure that it will not allow employees to place applicable markings on mail pieces and not tender any packages that are not properly marked/labeled.

Response: Section 227 of Pub 52 states that Postal Service employees may not remove, cross out, or obliterate labels or markings, even if asked to do so by a mailer. Additionally, the Postal Service does not permit employees to apply any markings or labels on customer mail pieces other than those labels used as internal control measures. The FRN language that this comment related to indicates that the use of the electronic indicators will allow Postal Service employees to placard internal mail transport equipment with HAZMAT labels, not individual mailpieces tendered from customers.

Comment: Several commenters indicated that the proposed rule is silent about what repercussions, if any, a shipper may be subject to in the event the shipper does not correctly communicate/label/mark a package. The commenters suggested that the Postal Service add language to the rule to specify to what penalties, if any, a mailer will be subject if the mailer fails to properly identify any DG in a package.

Response: The Postal Service notes that 39 U.S.C. 3018(b)(2) prohibits any person from ''mail[ing] or caus[ing] to be mailed hazardous material in violation of any statute or Postal Service regulation restricting the time, place, or manner in which hazardous material may be mailed'' and 3018(c) provides for penalties in the event of violations of the Postal Service's regulations promulgated under 3018. As such, the Postal Service may seek civil penalties against persons who violate these regulations.

Comment: Several commenters expressed concern that mailers and Postal Service acceptance personnel and individual mailers lack sufficient knowledge about DG and will only comply with the requirements in Pub 52 rather than also complying with the requirements in Title 49 of the Code of Federal Regulations and the International Civil Aviation Organization's Technical Instructions, with which air carriers must comply; and therefore, will not appropriately indicate the inclusion of HAZMAT in a shipment. These commenters suggested that the Postal Service incorporate language regarding ''applicable federal laws and regulations'' to acknowledge the Postal Service's responsibility to comply with such federal laws and regulations, especially those that may conflict with the proposed rule.

Response: Although the Postal Service strives to achieve consistency with other regulatory agency rules, it is not bound to do so per 39 U.S.C. 3018(a), which provides that ''[t]he Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mail.'' In this instance, the Postal Service has made determinations regarding safety of the mail based on its own experience and risk assessments.

Comment: One commenter expressed concern that the proliferation of ''electronic indicators,'' which cannot

be read by carriers, will be used in lieu of DG labels and markings.

Response: The new rule is supplemental, as the Postal Service has not excused mailers from any labeling and marking requirements.

Comment: Several commenters indicated that the number of STCs is not consistent and needs to be clarified. Some sections reference ''six unique STCs,'' while other sections reference ''eight STCs'', ''six STCs'' or ''5 STCs.''

Response: The different number of STC references were based upon individual mail products and allowable Extra Services. The *Summary of New Measures* section within this final rule provides additional clarification of the STC and ESC references.

Comment: Several commenters expressed concern that DG may still be consigned to an air carrier when an ESC is not applied to a shipment but there is a DG label affixed to the package. These commenters suggested that the Postal Service add the following language to address this matter: ''In addition to hazardous material package labels, provide unique ESCs to identify categories of hazmat with specific relevance to segregation, handling, and identification in the Postal Service network.''

Response: The Postal Service included language in the *Summary* section of this final rule indicating that this rule is in addition to the current regulations within Pub 52 and does not exempt mailers from complying with existing standards.

Comment: One air carrier supplier commented that any package that does not meet an air carrier's acceptance requirements will still be rejected, regardless of the ZIP Code. If an air carrier determines a package to be ineligible for air carriage, then the rule cannot supersede the air carrier's safety program.

Response: The Postal Service air carrier suppliers' contract with the Postal Service sets forth its obligations with respect to HAZMAT/DG.

Comment: Several commenters proposed that the Postal Service: (1) provide additional training opportunities for customers and Postal Service employees about HAZMAT requirements, and (2) enhance the availability of digital/electronic tools for customers (*e.g.,* what falls under air-eligible hazardous classifications and how are ''limited quantity'' non-continental shipments to be handled?).

Response: The Postal Service understands and shares the view that further training and education is necessary to effectively implement these rules and help customers, suppliers, and employees to comply with them. The Postal Service has initiated numerous digital, electronic, and manual initiatives both internally and externally. These initiatives increase, enhance, and amplify educational and instructional materials. New resources, enhancements, and additional opportunities to inform and educate internal and external stakeholders will continue to be rolled out and revised, as necessary. In addition, some examples of existing digital/electronic resources that can be found at *https://www.uspsdelivers.com/hazmat-shipping-safety/* and *https://postalpro.usps.com/operations#cat-subsection-1.*

Comment: Several commenters indicated that the final rule should clarify that the category ''air eligible hazardous material'' excludes air-eligible shipments containing hazardous materials that do not require markings.

Response: As stated in the *Summary* section of this final rule, the Postal Service excludes air-eligible mailings containing lithium batteries that do not require a HAZMAT marking from the STC and ESC requirement for domestic shipments.

Comment: Several commenters indicated that the Postal Service should clarify that shipments that bypass Postal Service air transportation that do not require markings (*e.g.,* lithium-ion batteries within a device), are exempt from separation requirements.

Response: The Postal Service's separation requirements were addressed in *New Mailing Standards for the Separation of Hazardous Materials* FRN (87 FR 73459), issued on November 30, 2022.

Comment: Several commenters stated that the proposed rule appears to require both STCs and ESCs in some cases. This may create redundant requirements that will create confusion and increase costs to shippers.

Response: Mailers are required to use one of the HAZMAT STCs and ESC 857 for domestic mailings. Content specific ESCs are optional for domestic mail but are required for the three mailable DG categories when sent internationally or to or from APO/FPO/DPO destinations. The *Summary of New Measures* section within this final rule provides additional clarification of the STC and ESC requirements.

Comment: Several commenters stated that the proposed rule allows ESCs to be used with optional STCs but is silent with regard to use of ESCs with required STCs.

Response: The Postal Service recommends that mailers use the content specific ESCs in conjunction with the required STC, but mailers are required to indicate ESC 857 in addition to one of the six required STCs for all packages containing HAZMAT. The *Summary of New Measures* section within this final rule provides additional clarification of the STC and ESC requirements.

Comment: Several commenters stated that the proposed rule does not specify that ESC 857 is required for shipments tendered with a manifest.

Response: ESC 857 is required for every HAZMAT/DG shipment.

Comment: Several commenters suggested the Postal Service vet the proposed rule with the industry and take the industry's expertise into consideration to ensure that the implementation costs of the final rule are minimized.

Response: The Postal Service has vetted and taken industry expertise and associated comments into consideration through this notice and will continue to work with industry through Mailers Technical Advisory Committee (MTAC) and other associations.

Comment: Several commenters stated that the 2D barcode recommendation included in the proposed rule may create confusion among shippers.

Response: The Postal Service appreciates this valuable feedback. The recommendation was not intended to create confusion among shippers.

The Postal Service has decided to require adoption of the 2D barcode within the shipping label of domestic mailpieces containing HAZMAT, effective January 21, 2024, as an additional measure to improve package visibility.

Comment: One air carrier supplier indicated that until vetting shippers/recipients occurs, including a known shipper program, fire or heat-related incidents will continue.

Response: The Postal Service continues to consider development of a Known Shipper/Trusted Shipper Program that would include eligibility and compliance criteria in the future. The Postal Service remains cognizant of developing requirements that could be cumbersome, costly, and possibly prohibitive to smaller mailers versus safety impacts to the public, industry, and Postal Service employees.

Comment: One air carrier supplier indicated that it does not and will not accept used, damaged, or defective electronic devices and indicated that vetting shippers of these products and manufacturer assurances of safety would be required prior to accepting such shipments.

Response: On June 6, 2022, the Postal Service issued an interim final rule that

prohibited used, damaged, or defective electronic devices within air transportation except for the remote Alaskan ZIP Codes as outlined in Appendix F.

Comment: One commenter indicated that the proposed rule puts an undue burden on shippers when the Postal Service could invest in its own systems to recognize required existing visual labels in automation. This commenter noted that the Postal Service appears to be attempting to solve one of its own operational problems by requiring industry to make costly changes.

Response: The changes are designed to facilitate ease of use of the entire mail system by mailers while also promoting safety. By requiring the use of STCs/ESCs, the Postal Service is making possible simplified solutions for determining the mode of transportation to be used for mail, and this in turn helps mailers by reducing operational complexity and thereby cost.

Comment: One commenter noted that the proposed rule appears to require specific STCs or alternatively, ESCs when used with optional STCs. Compliance with this complex requirement is dependent on the Postal Service's ability to make these nuances well-known and easy to follow for shippers and postal personnel alike. The proposed rule states that optional STCs may be used when mailing with an Extra Service such as Signature Conformation or Insurance. The commenter asked the Postal Service to clarify the use of STCs and ESCs. Specifically, the commenter asked whether the Postal Service meant to state that these STCs are required when mailing with Signature Confirmation or Insurance, or alternatively, whether the Postal Service meant that only the ESCs are required. Additionally, the commenter noted that the proposed rule states that the optional ESCs may be used with the 'optional' STCs and asked whether it is also permissible to be used the optional ESCs in conjunction with the required STCs where possible.

Response: The *Summary* and *Summary of New Measures* sections in this final rule and Appendix G in Pub 52 provide additional clarification about the STC and ESC requirements.

Comment: One commenter noted that the proposed rule states that an 857 ESC is required when using the Postal Service's API or Webtools to create a shipping label and asked if this also includes manifest mailings as well as PC Postage.

Response: ESC 857 is required for all shipments containing HAZMAT/DG.

Comment: One commenter indicated that the Postal Service announced additional requirements for shipping labels for HAZMAT (National Meter Accounting and Tracking (NMATS) Release Notes dated September 30, 2022). However, the proposed rule is silent with respect to those requirements. The additional requirements include the mandatory use of ''H'' as the class of service indicator in the upper left of the label and require that ground only items must have Surface Transportation Only text. The commenter suggested that the mandatory implementation date for these changes should line up with the rest of the requirements in proposed rule.

Response: The Postal Service strongly recommends the use of service icon ''H'' in the upper left corner when the package being shipped contains an item that is HAZMAT to further improve visual identification for domestic mail. Pub 199 found on PostalPro can be referenced for more information.

Comment: One commenter noted its appreciation that the Postal Service made the content based ESCs optional, as most shippers are not familiar with these 23 content classifications and distinctions. The commenter indicated that requiring all shippers to be this informed would be unrealistic and would further complicate compliance without improving the Postal Service's ability to identify HAZMAT during automation. Making the content based ESCs optional still allows sophisticated shippers, and those who ship large quantities of such items, to provide the more granular information.

Response: The Postal Service appreciates the commenter's support of initiatives to improve HAZMAT/DG identification and handling processes and its recognition of the Postal Service's sensitivity to the capability of customers to cope with complex requirements.

Comment: One commenter recommended that the Postal Service create a dedicated HAZMAT landing page on *USPS.com* and/or PostalPro that has an easy-to-follow guide listing common consumer products/items and their necessary markings, ship method, etc. The commenter specifically noted that Appendix A in Pub. 52 is not sufficient for this purpose, as shippers unfamiliar with HAZMAT regulations (or that do not employ hazmat professionals) will not understand whether their products contain the regulated substances listed in the existing table.

Response: The Postal Service appreciates this helpful feedback and will consider it for future HAZMAT/DG related customer outreach enhancements. Currently, the HAZMAT Shipping Safety Guide (*https://www.uspsdelivers.com/hazmat-shipping-safety/*) can be found on *usps.com* and additional content regarding shipping HAZMAT can be found in the Hazardous, Restricted, and Perishable Mail Instructions (*https://postalpro.usps.com/operations#cat-subsection-1*) on PostalPro under the Mailing and Shipping section dropdown menu.

Comment: One commenter stated that outside of the final rule itself, the Postal Service is encouraged to generally align the requirements of Pub. 52 with the PHMSA's HAZMAT regulations (49 CFR100–185). Pub. 52 is more restrictive than these regulations in a number of critical areas (*e.g.,* package weight limits for lithium-ion batteries), which needlessly complicates HAZMAT compliance for shippers.

Response: While the Postal Service strives to achieve consistency, it is not bound to do so per 39 U.S.C. 3018(a), which provides that ''[t]he Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mail.'' In this instance, the Postal Service has made determinations regarding safety of the mail based on its own experience and risk assessments.

Comment: One air carrier supplier indicated that HAZMAT/DG permitted in international mail are restricted to specified subsets of the following DG classes:

- Division 6.2, Infectious Substances (permitted only by authorization from Product Classification, USPS® Headquarters);
- Class 7, Radioactive Materials; and
- Class 9, Lithium Batteries installed in equipment (unmarked).

These categories may be air eligible for air cargo freighters; however, they are impermissible on the commenter's aircrafts.

Response: The Postal Service researched the matter with the supplier through follow up and determined that the Postal Service's tendering practices are consistent with contractual obligations. The Postal Service also understands the limited categories of Dangerous Goods that are acceptable in international transportation and will continue to follow such guidelines. The Postal Service STC requirements will support appropriate routing and handling of Dangerous Goods.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment

on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

9.0 Exchanges and Refunds

* * * * *

9.5 Priority Mail Express Postage and Fees Refunds

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9.5.5 Refunds Not Given

Postage will not be refunded if the guaranteed service was not provided due to any of the following circumstances:

* * * * *

[Revise the text of item g to read as follows:]

g. The shipment contained live animals or hazardous materials and was delivered, or delivery was attempted within 3 days of the date of mailing.

* * * * *

■ 3. Revise Publication 52 as follows:

Publication 52, Hazardous, Restricted and Perishable Mail

* * * * *

3 Hazardous Materials

* * * * *

32 General

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323 Mailer Responsibility

[Add new sections 323.1 through 323.6 to read as follows:]

323.1 Service Type Codes

Mailers tendering packages containing hazardous materials to the Postal Service must use a unique Service Type Code (STC) for domestic outbound and return packages that correspond to the appropriate product being shipped (*i.e.,* Priority Mail®, First-Class Package Service®, Parcel Select®, Parcel Select Lightweight®, and USPS Retail Ground®). The STC is required regardless of whether the mailpieces are entered at origin or for destination entry. If purchasing an eligible extra service, mailers must use the STC indicating the product and Extra Service. Extra Services permitted with hazardous materials mailings are:

a. Signature Confirmation
b. Insurance less than or equal to $500
c. Insurance over $500
d. Signature Requested for Priority Mail Express
e. Adult Signature over 21 for Priority Mail Express (tobacco/Electronic Nicotine Delivery System (ENDS) products)
f. Adult Signature over 21 for Priority Mail (ENDS products)

A list of HAZMAT STCs and ESCs can be found in Appendix G and Pub 199.

323.2 Extra Service Codes

Mailers tendering packages containing hazardous materials to the Postal Service must use ESC 857 for all packages containing HAZMAT. Mailers may optionally use one of 22 unique content specific Extra Service Code (ESC) for domestic outbound and return packages that correspond to the specific category of HAZMAT contained within the mailpiece. If one of the content specific ESC is used, then ESC 857 can be omitted when there are not enough extra service code fields available for the package details. A list of ESCs can be found in Appendix G and Pub 199.

Note: while currently this is a recommended practice, the Postal Service may undertake to make this requirement mandatory in the future.

323.3 Additional GS1 DotMatrix (2D) IMpb

In addition to including the appropriate STC in the one-dimensional GS1–128 IMpb barcode on the address label, the Postal Service requires adding two (2) supplemental GS1-DataMatrix (2D) IMpbs to domestic shipping labels for mailpieces containing hazardous materials effective January 21, 2024. One in the address block to the left of the Delivery Address and one in the lower right corner of the shipping label. For more information on the GS1-DataMatrix (2D) IMpbs, mailers can view GS1 (2D) information and find barcode specifications at: *https://www.gs1.org/docs/barcodes/GS1_DataMatrix_Guideline.pdf* and *https://postalpro.usps.com/shipping/impb/2d-impb-guide.*

323.4 Shipping Service File

Mailers shipping hazardous materials domestically utilizing PC Postage, eVS, USPS Ship, and/or ePostage platforms must incorporate the applicable Service Type Code (STC) and/or Extra Service Code (ESC) found in Appendix G and Pub 199 and transmit a Shipping Services File (SSF), Version 1.7 or higher, or Shipping Partner Event File (SPEF), using Version 5.0 or higher, to the Postal Service before, or concurrent with the tendering of any hazardous materials shipments.

323.5 Legacy Postage and Hard Copy Postage Statements

Mailers using legacy postage meters or hard copy postage forms must present hazardous materials mailings to a Postal Service retail or business mail entry unit for acceptance.

323.6 USPS Generated Shipping Labels

Mailers using a label generated by the USPS (including but not limited to USPS APIs, WebTools, Click-n-Ship, or Merchant Returns Application) must indicate whether the shipment contains hazardous materials at the time of label generation.

* * * * *

327 Transportation Requirements

327.1 General

[Revise the last sentence in bullet b. to read as follows:]

b. * * * A mailpiece containing mailable hazardous materials with postage paid at Marketing Mail, USPS Retail Ground, Parcel Select, or Package Service prices must not, under any circumstances, be transported on air transportation. This excludes those ZIP Codes that are only serviced by air transportation. See Appendix F for ZIP Codes serviced by air transportation only.

* * * * *

6 International Mail

62 Hazardous Materials: International Mail

621 General Requirements

* * * * *

[Add new section 621.5 to read as follows:]

621.5 Extra Service Codes and Shipping Service Files

Mailers shipping dangerous goods internationally, including to APO/FPO/DPO destinations utilizing PC Postage, eVS, USPS Ship, and ePostage platforms, must include ESC 857 and incorporate the applicable content specific Extra Service Code (ESC) found in Appendix G and Pub 199 and transmit a Shipping Services File (SSF), Version 1.7 or higher, or Shipping Partner Event File (SPEF), using Version 5.0 or higher, to the Postal Service before, or concurrent with, the tendering of any dangerous goods shipments.

* * * * *

[Add new Appendix G to read as follows:]

Appendix G

Hazardous Materials Service Type Codes (STCs) and Extra Service Codes (ESCs)

This appendix contains a complete list of STCs and ESCs to be applied within the tracking barcodes and electronic data submission for shipments containing hazardous materials or dangerous goods. See 323.1

STCs Domestic Outbound (Required)

The following STCs are required when shipping domestic hazardous materials, unless an STC from the ''Optional'' table is used.

760	Priority Mail Express Signature Waived—Hazardous Materials.
116	Priority Mail USPS Tracking—Hazardous Materials.
184	First-Class Package Service USPS Tracking—Hazardous Materials.
395	Parcel Select USPS Tracking—Hazardous Materials.
785	Parcel Select Lightweight USPS Tracking—Hazardous Materials.
362	USPS Retail Ground USPS Tracking—Hazardous Materials.

STCs Domestic Outbound (Optional)

The following STCs are optional unless one of the applicable Extra Services is selected when shipping domestic hazardous materials.

761	Priority Mail Express Signature Requested—Hazardous Materials.
762	Priority Mail Express Add Insurance <=$500—Hazardous Materials.
763	Priority Mail Express Insurance >$500 Restricted Delivery—Hazardous Materials.
764	Priority Mail Express Adult Signature Over 21—Hazardous Materials.
120	Priority Mail Insurance <=$500—Hazardous Materials.
323	Priority Mail Insurance >$500—Hazardous Materials.
075	Priority Mail Adult Signature Over 21—Hazardous Materials.
063	Priority Mail Signature Confirmation Hazardous Materials.
185	First-Class Package Service Insurance <=$500—Hazardous Materials.
166	First-Class Package Service Signature Confirmation Hazardous Materials.
186	First-Class Package Service Insurance >$500—Hazardous Materials.
483	Parcel Select Insurance <=$500—Hazardous Materials.
628	Parcel Select Insurance >$500—Hazardous Materials.
646	Parcel Select Signature Confirmation Hazardous Materials.
786	Parcel Select Lightweight Insurance <=$500—Hazardous Materials.
787	Parcel Select Lightweight Insurance >$500—Hazardous Materials.
749	Parcel Select Lightweight Signature Confirmation Hazardous Materials.
363	USPS Retail Ground Insurance <=$500—Hazardous Materials.
365	USPS Retail Ground Insurance >$500—Hazardous Materials.
383	USPS Retail Ground Signature Confirmation Hazardous Materials.

STCs Domestic Returns (Required)

The following STCs for domestic hazardous materials returns packages are required, unless an STC from the ''Optional'' list is used.

676	PRS—Hazardous Materials.
187	First-Class Package Return Service—Hazardous Materials.
385	Ground Return Service—Hazardous Materials.
037	Priority Mail Return Service—Hazardous Materials.
217	First-Class Package Return Service—Division 6.2 Hazardous Materials.
218	Ground Return Service—Division 6.2 Hazardous Materials.
219	Priority Mail Return Service—Division 6.2 Hazardous Materials.
859	PRS: HAZMAT—Division 6.2 Hazardous Materials.

STCs Domestic Returns (Optional)

The following STCs are optional for domestic hazardous materials returns packages unless the applicable Extra Service is selected.

678	PRS Insurance >$500 Hazardous Materials.
190	First-Class Package Return Service Insurance <=$500—Hazardous Materials.
191	First-Class Package Return Service Insurance >$500—Hazardous Materials.
388	Ground Return Service Insurance <=$500—Hazardous Materials.
399	Ground Return Service Insurance >$500—Hazardous Materials.
515	Priority Mail Return Service Insurance <=$500—Hazardous Materials.
517	Priority Mail Return Service Insurance >$500—Hazardous Materials.

ESCs Domestic (Optional)

The following is a list of category specific ESCs that may be used in conjunction with an STC if the mailer chooses.

810	Air Eligible Ethanol Package.
811	Class 1—Toy Propellant/Safety Fuse Package.
812	Hazardous Materials Class 3—Package.
813	Class 7—Radioactive Materials Package.
814	Class 8—Corrosive Materials Package.
815	Class 8—Nonspillable Wet Battery Package.
816	Class 9—Lithium Battery Marked—Ground Only Package.
817	Class 9—Lithium Battery—Returns Package.
818	Class 9—Lithium batteries, marked package.
819	Class 9—Dry Ice Package.
820	HAZMAT Class 9—Lithium batteries, unmarked package.
821	Class 9—Magnetized Materials Package.
822	Division 4.1—Mailable flammable solids and Safety Matches Package.
823	Division 5.1—Oxidizers Package.
824	Division 5.2—Organic Peroxides Package.
825	Division 6.1—Toxic Materials Package (with an LD50 of 50 mg/kg or less).
826	Division 6.2 Hazardous Materials.
827	Excepted Quantity Provision Package.
828	Ground Only Hazardous Materials.
829	ID8000 Consumer Commodity Package.
830	Lighters Package.
831	LTD QTY Ground Package.
832	Small Quantity Provision Package.

ESCs Domestic & International Including APO/FPO/DPO (Required)

The following ESC must be provided for all shipments containing hazardous materials.

857	Hazardous Materials.

ESCs International and APO/FPO/DPO (Required)

The following is a list of ESCs required for use in the mailer's Shipping Service File, when tendering the following dangerous goods internationally with the Postal Service.

813	Class 7—Radioactive Materials Package.
820	HAZMAT Class 9—Lithium batteries, unmarked package.*
826	Division 6.2 Hazardous Materials.

*The batteries must be installed in the equipment being shipped and must not bear markings or labels identifying the contents as lithium batteries.

* * * * *

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–08479 Filed 4–19–23; 11:15 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0155; FRL–10771–01–R9]

Air Plan Revisions; California; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendments.

SUMMARY: The Environmental Protection Agency (EPA) is making technical amendments to the Code of Federal Regulations (CFR) to properly codify negative declarations submitted by the State of California on behalf of local air agencies as revisions to the California State Implementation Plan (SIP). The regulatory text and materials affected by these format changes have all been previously submitted by the State of California and approved by the EPA.

DATES: These technical amendments are effective April 21, 2023.

FOR FURTHER INFORMATION CONTACT: Elijah Gordon, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972–3158 or by email at *gordon.elijah@epa.gov.* Mae Wang, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4137 or by email at *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: In this rule, the EPA is making administrative changes in the ''Negative declarations'' section in 40 CFR part 52, subpart F. These technical amendments will reformat the table listings of negative declarations from California districts as codified in 40 CFR 52.222 and include minor changes to regulatory text for proper table identification. The purpose of these changes is to align the structure and identification of tables in 40 CFR 52.222 to be consistent with current CFR guidelines for orderly codification and to provide clarity in the regulatory text. The changes simply revise the codification of provisions that are already in effect as a matter of law in federal and approved state programs. This action makes no change to the substance of 40 CFR 52.222.

The EPA has determined that this action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to public interest. Public notice and comment for this action is unnecessary because the underlying rules were already subject to a 30-day comment period, and this action is merely making administrative changes and updating the regulatory text accordingly. Further, this action is consistent with the purpose and rationale of the final rules. Because this action does not change the EPA's analyses or overall actions, no purpose would be served by additional public notice and comment. Consequently, additional public notice and comment are unnecessary.

The EPA also finds that there is good cause under APA section 553(d)(3) for these amendments to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. This action merely makes administrative changes that align the structure and identification of tables in 40 CFR 52.222 to be consistent with current CFR guidelines. For these reasons, the EPA finds good cause under APA section 553(d)(3) for these changes to become effective on the date of publication of this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: April 14, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

§ 52.222 [Amended]

■ 2. In § 52.222:
■ a. In the table immediately following paragraph (a)(1)(vii), designate the rows as paragraphs (a)(1)(vii)(A) through (S);
■ b. Revise paragraph (a)(2)(iv) introductory text;
■ c. In the table immediately following paragraph (a)(2)(iv),
■ i. Designate each entry in the first column as paragraphs (a)(2)(iv)(A) through (Q); and
■ ii. Designate the two cells in the second column of newly designated paragraph (a)(2)(iv)(L) as paragraphs (a)(2)(iv)(L)(*1*) and (*2*), respectively;
■ d. Add introductory text to paragraph (a)(4)(ii);
■ e. In the table immediately following paragraph (a)(4)(ii),
■ i. Designate each entry in the first column as paragraphs (a)(4)(ii)(A) through (P);
■ ii. Designate the two cells in the second column of newly designated paragraph (a)(4)(ii)(B) as paragraphs (a)(4)(ii)(B)(*1*) and (*2*), respectively;
■ iii. Designate the two cells in the second column of newly designated paragraph (a)(4)(ii)(F) as paragraphs (a)(4)(ii)(F)(*1*) and (*2*), respectively;
■ iv. Designate the two cells in the second column of newly designated paragraph (a)(4)(ii)(H) as paragraphs (a)(4)(ii)(H)(*1*) and (*2*), respectively;
■ v. Designate the two cells in the second column of newly designated paragraph (a)(4)(ii)(M) as paragraphs (a)(4)(ii)(M)(*1*) and (*2*), respectively; and
■ vi. Designate the two cells in the second column of newly designated paragraph (a)(4)(ii)(P) as paragraphs (a)(4)(ii)(P)(*1*) and (*2*), respectively;
■ f. Remove and reserve paragraph (a)(4)(iii);
■ g. In the table immediately following paragraph (a)(5)(ii),
■ i. Remove the table designation and heading; and
■ ii. Designate the rows as paragraphs (a)(5)(ii)(A) through (W);
■ h. In the table immediately following paragraph (a)(5)(iii),
■ i. Remove the table designation and heading; and
■ ii. Designate the rows as paragraphs (a)(5)(iii)(A) through (C);
■ i. In the table immediately following paragraph (a)(6)(x), designate the rows as paragraphs (a)(6)(x)(A) through (T);
■ j. Revise paragraph (a)(6)(xi) introductory text;
■ k. Immediately following paragraph (a)(6)(xi) introductory text,
■ i. Remove the table heading of the first undesignated table;

■ ii. In the first table, designate the rows as paragraphs (a)(6)(xi)(A) through (C); and
■ iii. Remove the second table;
■ l. Add paragraph (a)(6)(xiii);
■ m. In the table immediately following paragraph (a)(7)(iv),
■ i. Remove the table heading; and
■ ii. Designate the rows as paragraphs (a)(7)(iv)(A) through (LL);
■ n. In the table immediately following paragraph (a)(8)(iii),
■ i. Remove the table heading; and
■ ii. Designate the rows as paragraphs (a)(8)(iii)(A) through (I);
■ o. In the table immediately following paragraph (a)(9)(i),
■ i. Remove the table designation and heading; and
■ ii. Designate the rows as paragraphs (a)(9)(i)(A) through (LL);
■ p. In the table immediately following paragraph (a)(9)(iv),
■ i. Remove the table designation and heading; and
■ ii. Designate the rows as paragraphs (a)(9)(iv)(A) through (PP);
■ q. In the table immediately following paragraph (a)(9)(v),
■ i. Remove the table designation and heading; and
■ ii. Designate the rows as paragraphs (a)(9)(v)(A) through (UU);
■ r. Revise paragraph (a)(11)(i) introductory text;
■ s. In the table immediately following paragraph (a)(11)(i), designate the rows as paragraphs (a)(11)(i)(A) through (OO);
■ t. Revise paragraph (a)(12)(i) introductory text;
■ u. In the table immediately following paragraph (a)(12)(i),
■ i. Designate each entry in the first column as paragraphs (a)(12)(i)(A) through (X);
■ ii. Designate the two cells in the second column of newly designated paragraph (a)(12)(i)(B) as paragraphs (a)(12)(i)(B)(*1*) and (*2*), respectively;
■ iii. Designate the two cells in the second column of newly designated paragraph (a)(12)(i)(E) as paragraphs (a)(12)(i)(E)(*1*) and (*2*), respectively;
■ iv. Designate the two cells in the second column of newly designated paragraph (a)(12)(i)(H) as paragraphs (a)(12)(i)(H)(*1*) and (*2*), respectively;
■ v. Designate the two cells in the second column of newly designated paragraph (a)(12)(i)(L) as paragraphs (a)(12)(i)(L)(*1*) and (*2*), respectively;
■ vi. Designate the two cells in the second column of newly designated paragraph (a)(12)(i)(R) as paragraphs (a)(12)(i)(R)(*1*) and (*2*), respectively;
■ vii. Designate the two cells in the second column of newly designated paragraph (a)(12)(i)(U) as paragraphs (a)(12)(i)(U)(*1*) and (*2*), respectively; and
■ viii. Designate the two cells in the second column of newly designated paragraph (a)(12)(i)(W) as paragraphs (a)(12)(i)(W)(*1*) and (*2*), respectively;
■ v. In the table immediately following paragraph (a)(12)(ii), designate the rows as paragraphs (a)(12)(ii)(A) through (KK);
■ w. In the table immediately following paragraph (a)(14)(i),
■ i. Designate each entry in the first column as paragraphs (a)(14)(i)(A) through (O);
■ ii. Designate the two cells in the second column of newly designated paragraph (a)(14)(i)(F) as paragraphs (a)(14)(i)(F)(*1*) and (*2*), respectively;
■ iii. Designate the two cells in the second column of newly designated paragraph (a)(14)(i)(L) as paragraphs (a)(14)(i)(L)(*1*) and (*2*), respectively; and
■ iv. Designate the two cells in the second column of newly designated paragraph (a)(14)(i)(O) as paragraphs (a)(14)(i)(O)(*1*) and (*2*), respectively;
■ x. In the table immediately following paragraph (a)(14)(ii), designate the rows as paragraphs (a)(14)(ii)(A) through (EE);
■ y. In the table immediately following paragraph (a)(16)(i),
■ i. Remove the table designation; and
■ ii. Designate the rows as paragraphs (a)(16)(i)(A) through (MM).

The revisions and additions read as follows:

§ 52.222 Negative declarations.

(a) * * *

(2) * * *

(iv) The following negative declarations for the 1997 ozone NAAQS were adopted by the Sacramento Metropolitan Air Quality Management District.

* * * * *

(4) * * *

(ii) The following negative declarations for the 2008 ozone NAAQS were adopted by the Placer County Air Pollution Control District on February 13, 2014, and submitted to the EPA on April 14, 2014.

* * * * *

(6) * * *

(xi) The following negative declarations for the 1997 ozone NAAQS were adopted by the Antelope Valley Air Quality Management District on December 20, 2016, and submitted to the EPA on June 7, 2017.

* * * * *

(xiii) The following negative declarations for the 2008 ozone NAAQS were adopted by the Antelope Valley Air Quality Management District on December 20, 2016, and submitted to the EPA on June 7, 2017.

CTG source category	CTG reference document
(A) Can Coating	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks (EPA–450/2–77–008, 05/1977).
(B) Drum Coating	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings (EPA–453/R–08–003, 09/2008).
(C) Flat Wood Paneling Coating.	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling (EPA–450/2–78–032, 06/1978).
(D) Metal Furniture Coating	Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture (EPA–450/2–77–032, 12/1977).
(E) Pleasure Craft Coating	Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings (EPA–453/R–08–003, 09/2008).
(F) Tank Truck Gasoline Loading Terminals.	Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals (EPA–450/2–77–026, 10/1977).

* * * * *

(11) * * *

(i) The following negative declarations for the 1997 and 2008 ozone NAAQS were adopted by the Feather River Air Quality Management District.

* * * * *

(12) * * *

(i) The following negative declarations for the 1997 ozone NAAQS were adopted by the Imperial County Air Pollution Control District on July 13, 2010, and submitted to the EPA on December 21, 2010.

* * * * *

[FR Doc. 2023–08439 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 21–232, EA Docket No. 21–233; FR ID 136323]

Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization Program; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: On February 6, 2023, the Federal Communications Commission revised Commission rules. That document inadvertently failed to update the requirements for changes in name, address, ownership, or control of grantee in the case of a transaction affecting the grantee. This document corrects the final regulations.

DATES: Effective April 21, 2023.

FOR FURTHER INFORMATION CONTACT: Jamie Coleman, Office of Engineering and Technology, (202) 418–2705 or *Jamie.Coleman@FCC.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Nicole Ongele, (202) 418–2991 or send an email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, in ET Docket No. 21–232 and EA Docket No. 21–233, released on March 20, 2023. This document corrects an unintentionally omitted rule subparagraph in the final rules appendix of FCC 22–84, which was published in the **Federal Register** on February 6, 2023 (88 FR 7592).

List of Subjects in 47 CFR Part 2

Communications equipment, Radio, Telecommunications.

Accordingly, 47 CFR part 2 is corrected by making the following correcting amendments:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336 unless otherwise noted.

■ 2. Amend § 2.929 by revising paragraph (d) to read as follows:

§ 2.929 Changes in name, address, ownership or control of grantee.

* * * * *

(d) In the case of transactions affecting the grantee, such as a transfer of control or sale to another company, mergers, or transfer of manufacturing rights, notice must be given to the Commission via the internet at *https://apps.fcc.gov/eas* within 60 days after the consummation of the transaction.

(1) The notice described in the introductory text to this paragraph (d) must include:

(i) A written and signed certification that, as of the date of the filing of the notice, the equipment to which the change applies is not prohibited from receiving an equipment authorization pursuant to § 2.903;

(ii) An affirmative or negative statement as to whether the applicant is identified on the Covered List, established pursuant to § 1.50002 of this chapter, as an entity producing covered communications equipment; and

(iii) The written and signed certifications required under § 2.911(d)(7).

(2) Depending on the circumstances in each case, the Commission may require new applications for certification. In reaching a decision, the Commission will consider whether the acquiring party can adequately ensure and accept responsibility for continued compliance with the regulations. In general, new applications for each device will not be required. A single application for certification may be filed covering all the affected equipment.

Federal Communications Commission.

Ronald Repasi,

Acting Chief, Office of Engineering and Technology.

[FR Doc. 2023–08309 Filed 4–20–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 23–310; MB Docket No. 22–337; RM–11930; FR ID 136535]

Radio Broadcasting Services; Dennison, Ohio

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FM Table of Allotments, of the Federal Communications Commission's (Commission) rules, by allotting Channel 272A at Dennison, Ohio, as the community's first local service. A staff engineering analysis indicates that Channel 272A can be allotted to Dennison, Ohio, consistent with the minimum distance separation requirements of the Commission's rules, with a site restriction of 2.7 km (1.7 miles) west of the community. The reference coordinates are 40–23–54 NL and 81–21–33 WL.

DATES: Effective May 26, 2023.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, adopted April 11, 2023, and released April 11, 2023. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

The Commission will send a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202(b), amend the Table of FM Allotments under Ohio by adding an entry for ''Dennison'' to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

[U.S. States]

	Channel No.
* * * * *	
Ohio	
Dennison	272A
* * * * *	

[FR Doc. 2023–08203 Filed 4–20–23; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220711–0151; RTID 0648–XC947]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; White Hake Trimester Total Allowable Catch Area Closure for the Common Pool Fishery

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

ACTION: Temporary rule; area closure.

SUMMARY: This action closes the White Hake Trimester Total Allowable Catch Area to Northeast multispecies common pool vessels fishing with trawl gear, sink gillnet gear, and longline/hook gear, except for Handgear A and B permitted vessels using handgear or tub trawl, through April 30, 2023. The closure is required because the common pool fishery is projected to have caught over 90 percent of its Trimester 3 quota for white hake. This closure is intended to prevent an overage of the common pool's quota for this stock.

DATES: This action is effective April 18, 2023, through April 30, 2023.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Policy Analyst, 978–281–9232.

SUPPLEMENTARY INFORMATION: Federal regulations at § 648.82(n)(2)(ii) require closure of the common pool Trimester Total Allowable Catch (TAC) Area for a stock when 90 percent of the Trimester TAC is projected to be caught. The closure applies to all common pool vessels fishing with gear capable of catching that stock, and remains in effect for the remainder of the trimester. During the closure, affected common pool vessels may not fish for, harvest, possess, or land regulated multispecies or ocean pout in or from the Trimester TAC Area for the stock.

The Trimester 3 TAC for white hake is 17,857 lb (8.2 mt). Catch data (including landings and discards) indicate that the common pool fishery caught 9,700.3 lb (4.4 mt) of white hake, or 54.3 percent of the Trimester 3 TAC, through March 21, 2023. Based on remaining quota, recent catch rates, and historical participation in the fishery, NMFS projects that by April 15, 2023, the common pool achieved 90 percent of the Trimester 3 TAC for white hake.

Effective April 18, 2023, the White Hake Trimester TAC Area is closed for the remainder of Trimester 3, through April 30, 2023. The White Hake Trimester TAC Area consists of statistical areas, 513, 514, 515, 521, and 522. During the closure, common pool vessels fishing with trawl gear, sink gillnet gear, and longline/hook gear, except for Handgear A and B permitted vessels using handgear or tub trawl, may not fish for, harvest, possess, or land regulated multispecies or ocean pout in or from this area. The area reopens at the beginning of Trimester 1 of fishing year 2023 on May 1, 2023.

If a vessel declared its trip through the Vessel Monitoring System (VMS) or the interactive voice response system, and crossed the VMS demarcation line prior to April 18, 2023, it may complete its trip within the White Hake Trimester TAC Area.

If the common pool fishery exceeds its annual sub-Allowable Catch Limit (sub-ACL) for a stock in the 2022 fishing year, the overage must be deducted from the common pool's sub-ACL for that stock for fishing year 2023. The fishing year 2022 sub-Allowable Catch Limit for white hake is 44,313 lb (20.1 mt). NMFS estimates that the common pool has caught 35,937 lb (16.3 mt) so far in fishing year 2022.

Weekly quota monitoring reports for the common pool fishery are on the Greater Atlantic Regional Fisheries Office website at: *https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/nemultispecies.html.* NMFS will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, VMS catch reports, and other available information and, if necessary, will make additional adjustments to common pool management measures.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866. The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be impracticable and contrary to the public interest.

Regulations require the closure of a trimester TAC area to the common pool fishery when 90 percent of the Trimester TAC for a stock has been caught. Updated catch information through March 21, 2023, only recently became available indicating that the common pool fishery is projected to have caught 90 percent of its Trimester 3 TAC for white hake. The time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent the immediate closure of the White Hake Trimester TAC Area. This would be contrary to the regulatory requirement and would increase the likelihood that the common pool fishery would exceed its annual quota of white hake. Fishermen expect these closures to occur in a timely way to prevent overages and their payback requirements. Any overage of the annual quota could be detrimental to this fish stock. Also, any overage would be deducted from common pool's quota for the next fishing year, which could cause negative economic impacts to the common pool fishery due to less catch being available to fishery participants. This could undermine conservation and management objectives of the Northeast Multispecies Fishery Management Plan.

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

Dated: April 18, 2023.

Kelly Denit,

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

[FR Doc. 2023–08473 Filed 4–18–23; 4:15 pm]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 77
Friday, April 21, 2023

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[NRC–2023–0086]

Draft Regulatory Guide: Release of Patients Administered Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft regulatory guide (DG), DG–8061, ''Release of Patients Administered Radioactive Material.'' This DG is proposed Revision 2 to Regulatory Guide (RG) 8.39 of the same name. This proposed revision provides licensees with methods that are acceptable to the NRC for the release of patients after a medical procedure involving the administration of unsealed byproduct material, such as radiopharmaceuticals, or implants that contain radioactive material.

DATES: Submit comments by June 20, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0086. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kathrine Tapp, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–0236; email: *Kathrine.Tapp@nrc.gov,* or Brian Allen, Office of Nuclear Regulatory Research, telephone: 301–415–8402; email: *Brian.Allen3@nrc.gov,* or Rigel Flora, Office of Nuclear Regulatory Research, telephone: 301–415–3890; email: *Rigel.Flora@nrc.gov,* or Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301–415–2493; email: *Harriet.Karagiannis@nrc.gov.* All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0086 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0086.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2023–0086 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled ''Release of Patients Administered Radioactive Material,'' is temporarily identified by its task number, DG–8061. This DG–8061 is a proposed Revision 2 to RG 8.39 (ADAMS Accession No. ML21230A318).

This proposed Revision 2 provides: (1) information for the administered activity and measured dose rate thresholds to demonstrate compliance for commonly used radionuclides, (2) calculational methodologies to accommodate threshold modifications for patient-specific exposure situations

with modifying factors for biokinetics, occupancy, geometry, and attenuation based on patient-specific information, (3) calculations assuming unity for the occupancy factor if patient-specific information is not known, to avoid underestimating exposure, (4) flexibility for emerging radiopharmaceuticals that could be used for diagnostic or therapeutic purposes, (5) radiopharmaceutical activity thresholds for patients who may continue breastfeeding an infant or child after administration of radioactive material, with recommendations for breastfeeding interruption times for many typical administered medical dosages, and (6) a new section on ''Sources Separated from the Patient.''

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML21230A326). The staff develops a regulatory analysis to assess the value of issuing or revising a regulatory guide as well as alternative courses of action.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Proposed Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Backfitting, Forward Fitting, and Issue Finality

As discussed in the ''Implementation'' section of DG–8061, the NRC does not intend or approve any imposition of the guidance in this draft regulatory guide. Backfitting and issue finality considerations do not apply to licensees or applicants when performing activities under part 35 of title 10 of the *Code of Federal Regulations* (10 CFR). Therefore, the NRC has determined that its backfitting and issue finality regulations would not apply to this draft regulatory guide, if ultimately issued as Revision 2 to RG 8.39, because the draft regulatory guide does not include any provisions within the scope of matters covered by the backfitting provisions in 10 CFR parts 50, 70, 72, or 76 or the issue finality provisions of 10 CFR part 52.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: April 17, 2023.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

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

[FR Doc. 2023–08418 Filed 4–20–23; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–0913; Airspace Docket No. 23–AGL–9]

RIN 2120–AA66

Amendment of Class E Airspace; Hastings, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Hastings, MI. The FAA is proposing this action as the result of an airspace review caused by the decommissioning of the Grand Rapids very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operating Network (MON) Program. The name and geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before June 5, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–0913 and Airspace Docket No. 23–AGL–9 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instruction for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at Hastings Airport, Hastings, MI, to support instrument flight rule operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or dely. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT post these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice (DOT/ALL–14FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

Class E airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface to within an 8.2-mile (increased from an 6.4-mile) radius of Hastings Airport, Hastings, MI; removing the Grand Rapids VOR/DME and the associated extension from the airspace legal description; removing the exclusion area as it is not required; adding an extension within 2 miles each side of the 123° bearing from the airport extending from the 8.2-mile radius to 11.3 miles southeast of the airport; adding an extension within 2 miles each side of the 303° bearing from the airport extending from the 8.2-mile radius to 9.9 miles northwest of the airport; and updating the name (previously Hastings Municipal Airport) and geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Grand Rapids VOR, which provided navigational information to this airport, as part of the VOR MON Program to support instrument flight rule operations at this airport.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL MI E5 Hastings, MI [Amended]

Hastings Airport, MI
(Lat 42°39′48″ N, long 85°20′45″ W)

That airspace extending upward from 700 feet above the surface within an 8.2-mile radius of Hastings Airport; and within 2 miles each side of the 123° bearing from the airport extending from the 8.2-mile radius of the airport to 11.3 miles southeast of the airport; and within 2 miles each side of the 303° bearing of the airport extending from the 8.2-mile radius of the airport to 9.9 miles northwest of the airport.

Issued in Fort Worth, Texas, on April 10, 2023.

Martin A. Skinner,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2023–07839 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 200

RIN 0596–AD59

Organization, Functions, and Procedures; Functions and Procedures; Forest Service Functions

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The United States Department of Agriculture (USDA), Forest Service is inviting public feedback and initiating

Tribal consultation on the following topic and additional questions: Given that climate change and related stressors are resulting in increasing impacts with rapid and variable rates of change on national forests and grasslands, how should the Forest Service adapt current policies to protect, conserve, and manage the national forests and grasslands for climate resilience, so that the Agency can provide for ecological integrity and support social and economic sustainability over time?

DATES: Comments must be received in writing by June 20, 2023.

ADDRESSES: You may send comments by any of the following methods:

- *Preferred:* Federal eRulemaking Portal *www.regulations.gov.*
- *Mail:* Director, Policy Office, 201 14th Street SW, Mailstop 1108, Washington, DC 20250–1124.

All comments received will be posted to *www.regulations.gov,* including any personal information provided. The public may inspect comments received at *www.regulations.gov.* Do not submit any information you consider to be private, Confidential Business Information (CBI), or other information, the disclosure of which is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Christopher Swanston, Director, Office of Sustainability and Climate, (202) 205–0822. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Background

This advance notice of proposed rulemaking (ANPRM):

- Builds on ongoing work to implement section 2 of Executive Order (E.O.) 14072, *Strengthening the Nation's Forests, Communities, and Local Economies* (87 FR 24851, April 22, 2022), including input received from Tribal consultation and public comment on the recent Request for Information (RFI) (87 FR 42493, July 15, 2022) on mature and old-growth forest definition, identification, and inventory. E.O. 14072 calls particular attention to the importance of Mature and Old-Growth (MOG) forests on Federal lands for their role in contributing to nature-based climate solutions by storing large amounts of carbon and increasing biodiversity.
- Is consistent with and intended to support implementation of Secretary Vilsack's Memo 1077–044, *Climate Resilience and Carbon Stewardship of America's National Forests and Grasslands* (Secretary's Memo) (*https://www.usda.gov/directives/sm-1077-004*), and the USDA Forest Service's *Wildfire Crisis Strategy, Climate Adaptation Plan,* and *Reforestation Strategy for the National Forest System (https://www.fs.usda.gov/managing-land/wildfire-crisis).*
- Builds on the 2012 National Forest System Land Management Planning Rule (Planning Rule) at 36 CFR part 219 (*https://www.fs.usda.gov/planningrule*), which requires that revised Forest Service land management plans provide for ecological, social, and economic sustainability. The Planning Rule also created an adaptive management framework for land management planning, including assessment, plan revision or amendment, and monitoring.
- Uses the Planning Rule's definitions of ecological integrity and social and economic sustainability to structure the concept of climate resilience. Climate resilience is essential for ecological integrity and social and economic sustainability.
- Reflects the Forest Service's commitment to continual learning and organizational improvement by engaging people in conserving forests and grasslands under threat of loss due to climate change.

Climate change is leading to increasingly extreme storms and droughts, extensive pest and disease occurrence, more widespread chronic stress, and shifting fire regimes across forests and grasslands in the United States. Climate change also amplifies other existing stresses, including those from historic forest management and fire suppression approaches. Increasing activity and development within the wildland-urban interface further adds to these stressors, leading to increasingly rapid degradation of the health and ecological integrity of our forests and grasslands.

More ecosystems and watersheds are becoming vulnerable to severe disturbance, with some geographies and ecosystem types experiencing more rapid and compounding impacts than others. Some ecosystem services provided by forests are functioning, while others are at significant risk. In some places, high severity burns are resulting in long-term loss of forest cover, along with the loss of associated plant and animal communities dependent upon those forest ecosystems, including MOG-forest communities and at-risk species. In other places, climate change threatens the persistence of current forest types in some portions of their historical range.

National Forest management reflects what the American people desire from their natural resources at any given point in time. In response, management of the National Forest System (NFS) has evolved over the Forest Service's 118-year history. The Forest Reserve Act of 1891 shifted Federal land policy from a focus on transferring land out of Federal ownership to a focus on conservation and sustainability. Beginning with the Organic Act of 1897, the Federal Government shifted the focus of forest management towards: (1) improving and protecting forests; (2) securing favorable conditions for water flows (*i.e.,* protecting watersheds); and (3) furnishing a continual supply of timber.

These laws led to a period of custodial management from roughly 1905 to 1939 when the American people sought to reduce destructive and wasteful use of forest resources (see Figure 1). The onset of World War II (WWII) opened an era with an emphasis on increased timber production to support the war effort and post-war housing needs. Another shift began to occur in the 1960s with greater environmental awareness. The Multiple Use-Sustained Yield Act (MUSYA) of 1960 instructed the agency to equally balance outdoor recreation, range, timber, watersheds, fish, and wildlife with a greater emphasis on accountability to a broader group of stakeholders, establishing the regime the Forest Service must manage under today. Additionally, the National Forest Management Act (NFMA) enacted in 1976 gives the Secretary of Agriculture broad authority to manage all forests that are in imminent danger of insect attack or disease and instructs the Secretary to comply with MUSYA. The NFMA instructs the Secretary to use new research to protect the Nation's natural resources including soil, water, and air resources as well as the future productivity of renewable resources.

High harvest levels continued into the early 1990s. Over the following decades, National Forest System management continued to evolve with new environmental laws and regulations. In the 1990s and early 2000s, multiple attempts were made to revise the Forest Service's 1982 Land Management Planning Rule to better reflect the Agency's continued learning and shifts in management priorities and needs. Those years also saw rising costs of wildfire suppression as a proportion of the Forest Service's budget, as climate change and increases in the numbers of people and value of infrastructure in the wildland-urban interface exacerbated challenges from past fire suppression, drought, insects, and disease.

In 2012, USDA and the Forest Service published a new Planning Rule (77 FR 21162, April 9, 2012), which required that land management plans provide for ecological sustainability and contribute to social and economic sustainability, using public input and the best available scientific information to inform plan decisions. The 2012 Planning Rule contained a strong emphasis on protecting and enhancing water resources, restoring land and water ecosystems, and providing ecological conditions to support the diversity of plant and animal communities, while providing for ecosystem services and multiple uses. It explicitly recognized climate change as one of the challenges for land management into the future.

The Forest Service currently integrates forest restoration, climate resilience, watershed protection, wildlife conservation, and opportunities to contribute to vibrant local economies, along with continued and growing investments with a focus on equity and partnerships. In recent years the impacts of climate change as a system driver have become even clearer. The risks and costs associated with high-severity wildfires have also continued to grow. This ANPRM reflects these management priorities and challenges.

To put this evolution of National Forest System management into context, currently the Forest Service commercially harvests one tenth of one percent of acres within the National Forest System each year. Harvests designed to improve stand health and resilience by reducing forest density or removing trees damaged by insect or disease make up 86 percent of those acres. The remainder are final or regeneration harvests that are designed to be followed by reforestation.

At the same time, over the past 15 years data shows that disturbance driven primarily by wildfire and insect and disease has adversely impacted more than 25 percent of the 193 million acres across the National Forest System (see Figure 2). This rapidly changing environment is now the primary driver of forest loss and type conversion. Wildfire alone causes approximately 80 percent of reforestation needs on National Forest System lands, and we expect those needs to continue to grow: More than half of the 4 million acres of potential reforestation needs on National Forest System lands stems from wildfires in 2020 and 2021 (see Figure 3).

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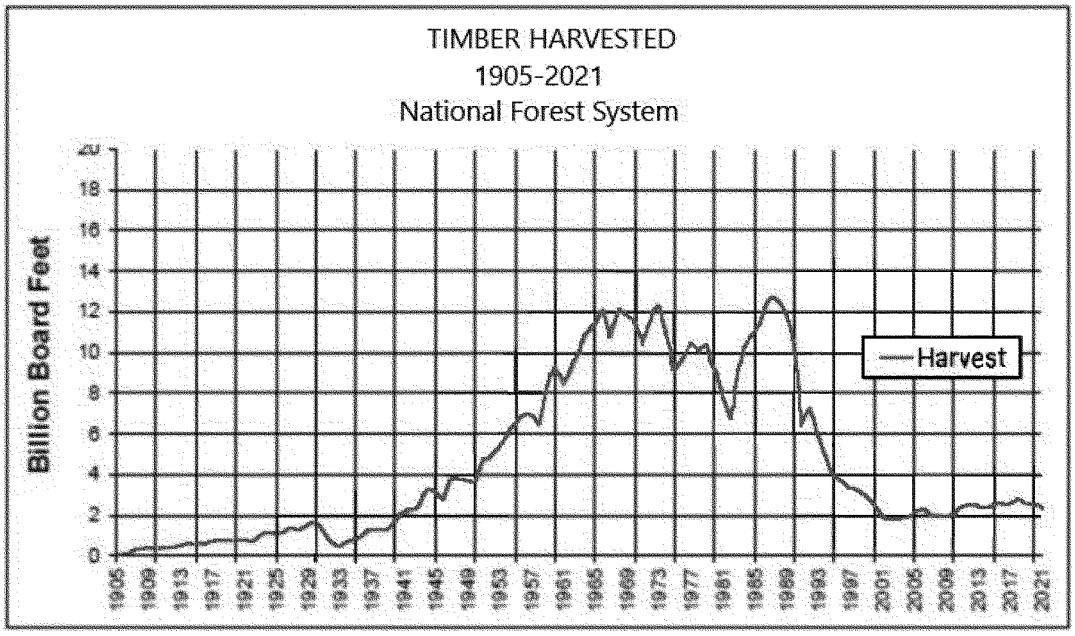

Figure 1. Timber harvested on the National Forest System from 1905-2021 in billion board feet.

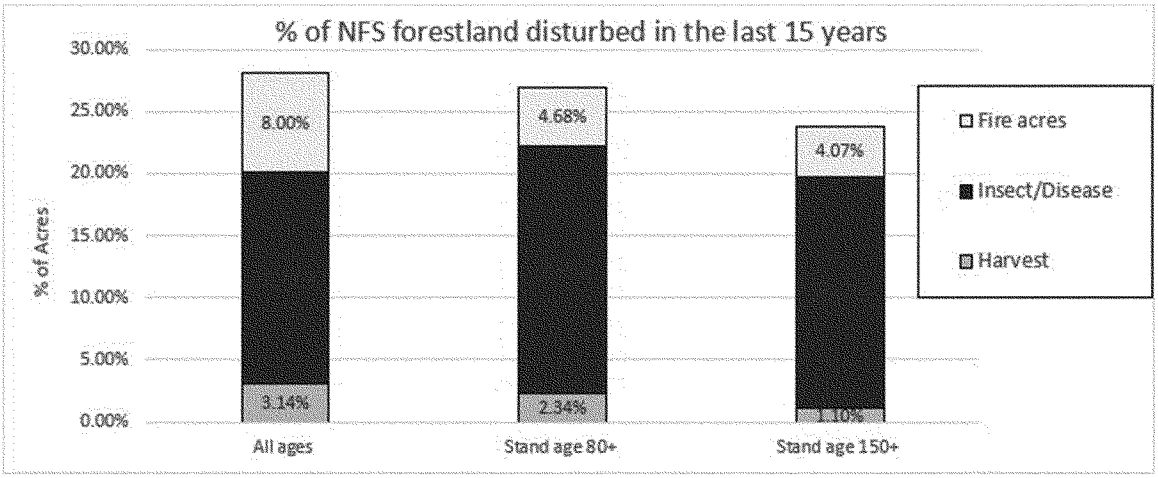

Figure 2. National Forest disturbance has increased over the past fifteen years driven primarily by overstocked forests that are susceptible to insects, disease and wildfire. Forests are also disturbed by timber harvest (these figures include harvest for ecological restoration and fire risk reduction). Most forest disturbances result in different plants, animals, and fungi colonizing an area due to the shift of environmental factors in the area of disturbance.

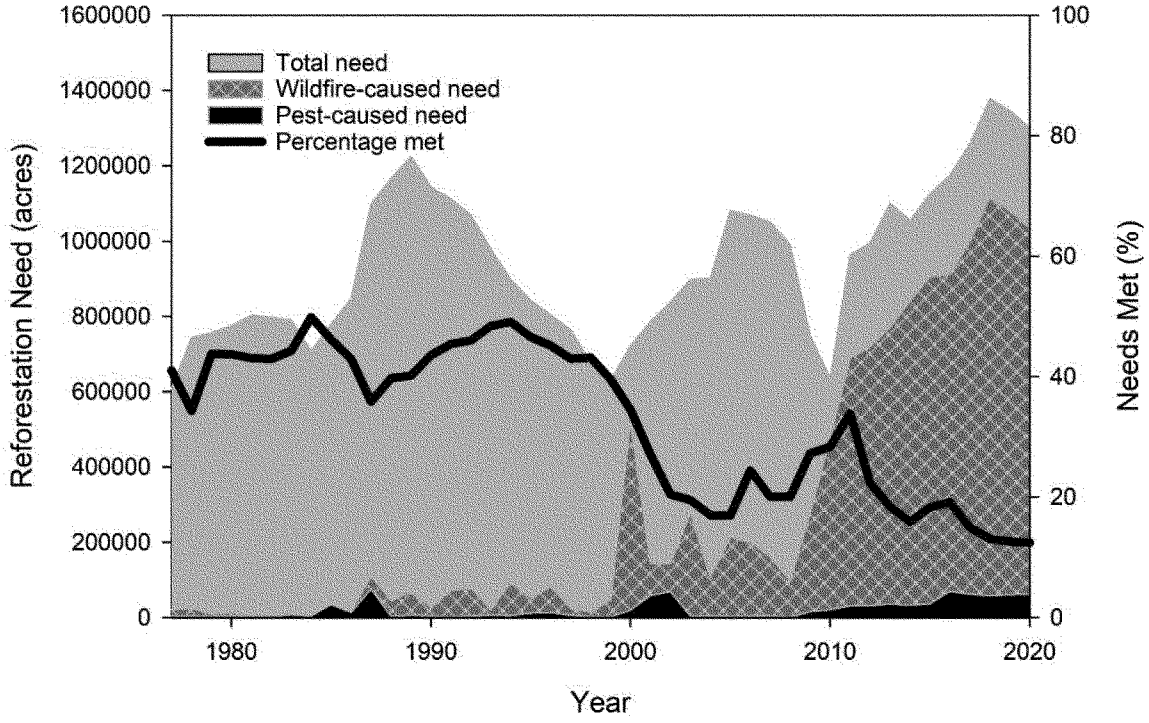

Figure 3. Although the annual reforestation need for lands managed by the Forest Service has averaged around 1 million acres, the amount of reforestation need caused by wildfire began to rise at the turn of the century and continues to increase exponentially. From 1980 through 2000, the Forest Service annually met about 45 percent of its reforestation needs, but during the past 20 years that figure has dropped to about 25 percent. Greater than 50 percent of the current backlog in reforestation arose from wildfires in 2020 and 2021. Currently, 90 percent of National Forest System reforestation needs are created by wildfire, insect and disease, storms, and other disturbances. The remaining 10 percent of reforestation needs are driven by timber harvesting, and the Forest Service is required under the National Forest Management Act to ensure reforestation following timber harvest.

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Updated and continually evolving science and better understanding of Indigenous Knowledge (IK) are helping the Agency to clarify these vulnerabilities and threats. This improved clarity, combined with innovations in resource inventory, data visualization, and risk assessment also help to inform and prioritize conservation, adaptive management, policies, and actions.

The Forest Service is actively developing and deploying spatially explicit tools to better support climate-informed decision-making, in line with the Secretary's Memo 1077–044, *Climate Resilience and Carbon Stewardship of America's National Forests and Grasslands.*

The Secretary's Memo directs the Forest Service to spatially identify wildfire and climate change-driven threats and risks to key resources and values in the National Forest System, including water and watersheds, biodiversity and species at risk, forest carbon, and reforestation. Further, section 2 of E.O. 14072 specifically directs Federal agencies to identify mature and old forests on Forest Service and Bureau of Land Management (BLM) lands.

Through this ANPRM, USDA is sharing the beta version of a new Forest Service Climate Risk Viewer (*https://storymaps.arcgis.com/collections/87744e6b06c74e82916b9b11da218d28*) for public feedback (see Section 1 below). This beta version was developed with 38 high-quality datasets and begins to illustrate the overlap of multiple resource values with climate exposure and vulnerability. The viewer also includes current management direction on National Forest System lands. The viewer allows for a place-based analysis of the need for climate adaptation to maintain, restore, and expand valued forest ecosystem and watershed characteristics. Additionally, the viewer supports identification of gaps between current management and potential conservation and adaptation practices. The beta version of the mature and old-growth (MOG) inventory that is being developed pursuant to E.O. 14072 and the RFI for MOG is also being released to help inform policy and decision-making on how best to conserve, foster, and expand the values of mature and old-growth forests on our Federal lands. Core information from the MOG inventory has been integrated into the viewer.

The Secretary's Memo called for additional fireshed data layers to inform

investments under the Forest Service's Wildfire Crisis Strategy (WCS) (*https://www.fs.usda.gov/managing-land/wildfire-crisis*), which clearly lays out risks to people, communities, and ecosystem health related to wildfire and sets forth a strategy for mitigating and recovering from those risks. The WCS is a core component of the Forest Service's Climate Adaptation Plan, which involves reducing risk of catastrophic wildfire in the near term and creates time and opportunity to foster long-term climate resilience in these ecosystems.

In January 2023, USDA and the Forest Service announced FY 2023 investments in 11 new landscapes for wildfire risk reduction, along with additional investments in the 10 initial landscapes announced in April 2022. These 11 new landscapes were prioritized after a review of new data layers developed pursuant to the Secretary's Memo that included a focus on protecting critical infrastructure, public water sources, and at-risk species habitat; equity; and proximity to Tribal lands, in addition to wildfire exposure to home and buildings. Consistent with the President's E.O. 14072, the importance of mature and old-growth forests were recognized and the Agency highlighted that the science around large tree retention and conservation is part of its fuels reduction strategy.

This ANPRM continues the Agency and Department's commitment to climate-adapted approaches to conserve the nations forests and grasslands. We invite public input and Tribal consultation on how the Agency can continue to adapt current policies and management and develop new policies and practices for conservation and climate resilience to support ecologic, social and economic sustainability in light of climate change, human induced changes, and other stressors.

Additional information pertaining to Forest Service sustainability and climate initiatives can be found here: *https://www.fs.usda.gov/managing-land/sc.*

Comments Requested

Climate change and related stressors, such as wildfire, drought, insects and disease, extreme weather events, and chronic stress on ecosystems are resulting in increasing impacts with rapid and variable rates of change on national forests and grasslands. These impacts can be compounded by fire suppression, development in the Wildland Urban Interface (WUI), and non-climate informed timber harvest and reforestation practices.

Multiple Forest Service plans, policies, and regulations already include direction on climate adaptation. However, given (1) increasing rates of change, and (2) new information and ways of assessing and visualizing risk, USDA and the Forest Service are issuing this ANPRM to seek input on how we can develop new policies or build on current policies to improve our ability to foster climate resilience, recognizing that impacts are different in different places across the country.

We are interested in public feedback and requests for Tribal consultation on a range of potential options to adapt current policies or develop new policies and actions to better anticipate, identify, and respond to rapidly changing conditions associated with climate-amplified impacts. Overarching questions include:

- How should the Forest Service adapt current policies and develop new policies and actions to conserve and manage the national forests and grasslands for climate resilience, so that the Agency can provide for ecological integrity and support social and economic sustainability over time?
- How should the Forest Service assess, plan for and prioritize conservation and climate resilience at different organizational levels of planning and management of the National Forest System (*e.g.,* national strategic direction and planning; regional and unit planning, projects and activities)?
- What kinds of conservation, management or adaptation practices may be effective at fostering climate resilience on forests and grasslands at different geographic scales?
- How should Forest Service management, partnerships, and investments consider cross-jurisdictional impacts of stressors to forest and grassland resilience at a landscape scale, including activities in the WUI?
- What are key outcome-based performance measures and indicators that would help the Agency track changing conditions, test assumptions, evaluate effectiveness, and inform continued adaptive management?

Examples, comments, and Tribal consultation would be especially helpful on the following topics:

1. Relying on Best Available Science, including Indigenous Knowledge (IK), to Inform Agency Decision Making.

a. How can the Forest Service braid together IK and western science to improve and strengthen our management practices and policies to promote climate resilience? What changes to Agency policy are needed to improve our ability to integrate IK for climate resilience—for example, how might we update current direction on best available scientific information to integrate IK, including in the Forest Service Handbook (FSH) Section 1909.12?

b. How can Forest Service land managers better operationalize adaptive management given rapid current and projected rates of change, and potential uncertainty for portions of the National Forest System?

c. Specifically for the Forest Service Climate Risk Viewer (described above), what other data layers might be useful, and how should the Forest Service use this tool to inform policy?

2. Adaptation Planning and Practices. How might explicit, intentional adaptation planning and practices for climate resilience on the National Forest System be exemplified, understanding the need for differences in approach at different organizational levels, at different ecological scales, and in different ecosystems?

a. *Adaptation Planning:*

i. How should the Forest Service implement the 2012 Planning Rule under a rapidly changing climate, including for assessments, development of plan components, and related monitoring?

1. How might the Forest Service use management and geographic areas for watershed conservation, at-risk species conservation and wildlife connectivity, carbon stewardship, and mature and old-growth forest conservation?

ii. How might the Forest Service think about complementing unit-level plans with planning at other scales, such as watershed, landscape, regional, ecoregional, or national scales?

a. *Adaptation Practices:*

i. How might the Agency maintain or foster climate resilience for a suite of key ecosystem values including water and watersheds, biodiversity and species at risk, forest carbon uptake and storage, and mature and old-growth forests, in addition to overall ecological integrity? What are effective adaptation practices to protect those values? How should trade-offs be evaluated, when necessary?

ii. How can the Forest Service mitigate risks to and support investments in resilience for multiple uses and ecosystem services? For example, how should the Forest Service think about the resilience of recreation infrastructure and access; source drinking water areas; and critical infrastructure in an era of climate change and other stressors?

iii. How should the Forest Service address the significant and growing need for post-disaster response, recovery, reforestation and restoration, including to mitigate cascading disasters

(for example, post-fire flooding, landslides, and reburns)?

iv. How might Forest Service land managers build on work with partners to implement adaptation practices on National Forest System lands and in the WUI that can support climate resilience across jurisdictional boundaries, including opportunities to build on and expand Tribal co-stewardship?

v. Eastern forests have not been subject to the dramatic wildfire events and severe droughts occurring in the west, but eastern forests are also experiencing extreme weather events and chronic stress, including from insects and disease, while continuing to rebound from historic management and land use changes. Are there changes or additions to policy and management specific to conservation and climate resilience for forests in the east that the Forest Service should consider?

3. Mature and Old Growth Forests. The inventory required by E.O. 14072 demonstrated that the Forest Service manages an extensive, ecologically diverse mature and old-growth forest estate. Older forests often exhibit structures and functions that contribute ecosystem resilience to climate change. Along with unique ecological values, these older forests reflect diverse Tribal, spiritual, cultural, and social values, many of which also translate into local economic benefits.

Per direction in E.O. 14072, this section builds on the RFI to seek public input on policy options to help the Forest Service manage for future resilience of old and mature forest characteristics. Today there are concerns about the durability, distribution, and redundancy of these systems, given changing climate, as well as past and current management practices, including ecologically inappropriate vegetation management and fire suppression practices. Recent science shows severe and increasing rates of ecosystem degradation and tree mortality from climate-amplified stressors. Older tree mortality due to wildfire, insects and disease is occurring in all management categories.

The Forest Service is analyzing threats to mature and old-growth forests to support policy development to reduce those threats and foster climate resilience. Today's challenge for the Forest Service is how to maintain and grow older forest conditions while improving and expanding their distribution and protecting them from the increasing threats posed by climate change and other stressors, in the context of its multiple-use mandate.

a. How might the Forest Service use the mature and old-growth forest inventory (directed by E.O. 14072) together with analyzing threats and risks to determine and prioritize when, where, and how different types of management will best enable retention and expansion of mature and old-growth forests over time?

b. Given our current understanding of the threats to the amount and distribution of mature and old-growth forest conditions, what policy, management, or practices would enhance ecosystem resilience and distribution of these conditions under a changing climate?

4. Fostering Social and Economic Climate Resilience.

a. How might the Forest Service better identify and consider how the effects of climate change on National Forest System lands impact Tribes, communities, and rural economies?

b. How can the Forest Service better support adaptive capacity for underserved communities and ensure equitable investments in climate resilience, consistent with the Forest Service's Climate Adaptation Plan, Equity Action Plan and Tribal Action Plan?

c. How might the Forest Service better connect or leverage the contribution of State, Private and Tribal programs to conservation and climate resilience across multiple jurisdictions, including in urban areas and with Tribes, state, local and private landowners?

d. How might the Forest Service improve coordination with Tribes, communities, and other agencies to support complementary efforts across jurisdictional boundaries?

e. How might the Forest Service better support diversified forest economies to help make forest dependent communities more resilient to changing economic and ecological conditions?

Christopher French,

Deputy Chief, National Forest System, Forest Service.

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2020–0022]

RIN 0651–AD47

Changes Under Consideration to Discretionary Institution Practices, Petition Word-Count Limits, and Settlement Practices for America Invents Act Trial Proceedings Before the Patent Trial and Appeal Board

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is considering modifications to the rules of practice for inter partes review (IPR) and post-grant review (PGR) proceedings before the Patent Trial and Appeal Board (PTAB or Board) to better align the practices with the USPTO's mission to promote and protect innovation and investment in the same, and with the congressional intent behind the American Invents Act (AIA) to provide a less-expensive alternative to district court litigation to resolve certain patentability issues while also protecting against patentee harassment. The USPTO is considering promulgating rules the Director, and by delegation the Board, will use to exercise the Director's discretion to institute IPRs and PGRs; to provide a procedure for separate briefing on discretionary denial that will allow parties to address relevant issues for discretionary denial without encroaching on the pages they are afforded to address the merits of a case; to provide petitioners the ability to pay additional fees for a higher word-count limit; and to clarify that all settlement agreements, including pre-institution settlement agreements, are required to be filed with the Board.

DATES: Comments must be received by June 20, 2023 to ensure consideration.

ADDRESSES: For reasons of Government efficiency, comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, one should enter docket number PTO–P–2020–0022 on the homepage and click ''search.'' The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this document and click on the ''Comment'' icon, complete the required fields, and enter or attach their

comments. Attachments to electronic comments will be accepted in Adobe® portable document format (PDF) or Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of, or access to, comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Michael Tierney, Vice Chief Administrative Patent Judge, and Amber Hagy, Lead Administrative Patent Judge, at 571–272–9797.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose

The United States Patent and Trademark Office (USPTO or Office) is charged with promoting innovation through patent protection. U.S. Const., art. I, section 8. The patent system fosters technological innovation not only by encouraging the public disclosure of ideas, but also by providing limited time, exclusive rights to the patented innovation and incentivizing research and development and investment in the same, as well as the investment necessary to bring that research and development to market. The patent system is a catalyst for jobs, economic prosperity, and world problem-solving. It works most efficiently and effectively when the USPTO issues and maintains robust and reliable patents. Patents help protect the funds invested in research and development and bring ideas to market. Optimal benefits of the patent system are achieved when inventors and assignees granted patent rights can efficiently engage in technology transfer and licensing (including cross-licensing), obtain funding to bring ideas to market, and/or enforce their rights. The patent system works best when any disputes as to the validity or infringement of patents are addressed efficiently and effectively, and when appropriate steps are taken to curb abusive actions that contravene the Office's mission to promote innovation. Congress recognized those dynamics when it designed the Leahy-Smith America Invents Act (AIA) post-grant proceedings ''to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary and counterproductive litigation costs.'' H.R. Rep. No. 112–98, part 1, at 40 (2011), 2011 U.S.C.C.A.N. 67, 69; *see* S. Rep. No. 110–259, at 20 (2008).

In designing the AIA, Congress empowered the Director of the USPTO to prescribe regulations related to the implementation of the AIA. Under 35 U.S.C. 316(a) and 326(a), the Director shall prescribe regulations for certain enumerated aspects of AIA proceedings, and under 35 U.S.C. 2(b)(2)(A), the Director may establish regulations that ''shall govern the conduct of proceedings in the Office.'' 35 U.S.C. 316 and 326. The Director's discretion is informed by 35 U.S.C. 316(b) and 326(b), which require that ''the Director shall consider the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under'' 35 U.S.C. 316 and 326. Sections 314(a) and 324(a) of 35 U.S.C. provide the Director with discretion to deny a petition, even when meritorious. *See, e.g.,* 35 U.S.C. 314(a) (stating ''[t]he Director may not authorize an *inter partes* review to be instituted unless . . .''); *Cuozzo Speed Techs., LLC* v. *Lee,* 579 U.S. 261, 273 (2016) (''[T]he agency's decision to deny a petition is a matter committed to the Patent Office's discretion.''). Congress also provided that in ''determining whether to institute [an AIA post-grant proceeding], the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.'' 35 U.S.C. 325(d).

The changes under consideration would amend the rules of practice for IPR and PGR proceedings under the AIA. In proposing these changes, the Director has considered the comments received from stakeholders and the public, including in response to the Request for Comments on Discretion to Institute Trials Before the Patent Trial and Appeal Board (85 FR 66502 (Oct. 20, 2020)) (RFC), as well as ''the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under'' 35 U.S.C. 316 and 326.

The changes under consideration build on and codify existing precedent and guidance on Director's discretion to determine whether to institute an IPR or PGR. In considering possible changes, it important to keep in mind that, as the Supreme Court explained in *Cuozzo,* ''the purpose of the proceeding is not quite the same as the purpose of district court litigation.'' *Cuozzo,* 579 U.S. at 279. As the Court stated, ''one important congressional objective'' in establishing IPR review is ''giving the Patent Office significant power to revisit and revise earlier patent grants.'' *Id.* at 272. The ''basic purpose[ ]'' of the review is ''to reexamine an earlier agency decision''; it ''offers a second look at an earlier administrative grant of a patent.'' *Id.* at 279. The Court further noted that, under the AIA, ''any third party can ask the agency to initiate inter partes review of a patent claim''; ''[p]arties that initiate the proceeding need not have a concrete stake in the outcome; indeed, they may lack constitutional standing.'' *Id.* at 268, 279. ''Thus, in addition to helping resolve concrete patent-related disputes among parties, inter partes review helps protect the public's 'paramount interest in seeing that patent monopolies . . . are kept within their legitimate scope.' '' *Id.* at 279–280 (quoting *Precision Instrument Mfg. Co.* v. *Automotive Maintenance Machinery Co.,* 324 U.S. 806, 816 (1945)).

The changes under consideration provide that, in certain circumstances in which specific elements are met (and applicable exceptions do not apply), the Director, and by delegation the Board,[1] will exercise the Director's discretion and will deny institution of an IPR or PGR. The USPTO is also considering broadening the types of relationships between petitioners and other entities the Office will consider when evaluating discretionary denial in order to ensure that entities related to a party in an AIA proceeding are fully evaluated with regard to conflicts, estoppel provisions, and other aspects of the proceedings. The Office is also considering whether, in certain circumstances, challenges presenting ''compelling merits'' will be allowed to proceed at the Board even where the petition would otherwise be a candidate for discretionary denial (as is the current practice under the Director's Memorandum Regarding Interim Procedure for Discretionary Denials in AIA Post-grant Proceedings with Parallel District Court Litigation of June 21, 2022 (discussed below)). In addition, the Office is considering whether to promulgate discretionary denial rules to ensure that certain for-profit entities do not use the IPR and PGR processes in ways that do not advance the mission and vision of the Office to promote

[1] Any reference to the ''Board'' refers to actions the Board takes by delegation from the Director. Such actions are reviewable by the Director.

innovation or the intent behind the AIA to improve patent quality and limit unnecessary and counterproductive litigation costs.

Recognizing the important role the USPTO plays in encouraging and protecting innovation by individual inventors, startups, and under-resourced innovators who are working to bring their ideas to market, the Office is considering limiting the impact of AIA post-grant proceedings on such entities by denying institution when certain conditions are met. The Office is seeking input on how it can protect those working to bring their ideas to market either directly or indirectly, while not emboldening or supporting economic business models that do not advance innovation. For example, the Office seeks input on to whether to require identification of anyone having an ownership interest in the patent owner or petitioner. The USPTO welcomes thoughts on any additional disclosure requirements needed and how the Board should consider that information when exercising Director discretion.

The Office is also considering additional measures to address the concerns raised by repeated validity challenges to patent claims (potentially resulting in conflicting outcomes and overburdening patent owners). The USPTO is considering further modifying and clarifying circumstances in which the Board will deny review of serial and parallel petitions. As to parallel petitions, the Office is also considering changes to provide that, as an alternative to filing multiple petitions, a petitioner may pay additional fees for a higher word-count limit.

Furthermore, the Office is considering rules related to the framework the Board will use to conduct an analysis under 35 U.S.C. 325(d), which provides that in ''determining whether to institute [an AIA post-grant proceeding], the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.''

In addition, the USPTO is considering a rule clarifying that if institution of an IPR is not discretionarily denied in view of any other criteria, the Board shall consider whether to deny institution if there is a pending district court action involving claims challenged in the IPR. In the case of a parallel district court action in which a trial adjudicating the patentability of challenged claims has not already concluded at the time of an IPR institution decision, the USPTO is proposing rules to install *Apple* v. *Fintiv* and related guidance, with additional proposed reforms. *See Apple Inc.* v. *Fintiv, Inc.,* IPR2020–00019, Paper 11, 2020 WL 2126495 (PTAB Mar. 20, 2020) (designated precedential May 5, 2020); Director's Memorandum Regarding Interim Procedure for Discretionary Denials in AIA Post-grant Proceedings with Parallel District Court Litigation (June 21, 2022) (Guidance Memorandum).[2] The USPTO is considering separate rules for instances in which a trial adjudicating the validity of challenged claims—in district court or during post-grant proceedings—has already concluded at the time of an IPR institution decision.

The USPTO is also considering a separate briefing process for addressing discretionary denial considerations under 35 U.S.C. 314(a), 324(a), and 325(d) so that briefing on discretionary denial does not encroach on the parties' word-count limits for briefing on the merits.

Lastly, the USPTO is considering aligning the requirements for terminating proceedings pre- and post-institution by requiring that pre-institution settlement agreements be filed with the Board to support the termination of a proceeding pre-institution.

Background

Development of the Changes Under Consideration

On September 16, 2011, the AIA was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)), and in 2012, the USPTO implemented rules to govern Office trial practice for AIA trials, including IPR, PGR, covered business method (CBM), and derivation proceedings pursuant to 35 U.S.C. 135, 316, and 326 and AIA 18(d)(2). *See* Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612 (Aug. 14, 2012); Changes to Implement Inter Partes Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012); Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 FR 48734 (Aug. 14, 2012). Additionally, the USPTO published a Patent Trial Practice Guide for the rules to advise the public on the general framework of the regulations, including the structure and times for taking action in each of the new proceedings. *See* Office Patent Trial Practice Guide, 77 FR 48756 (Aug. 14, 2012). Since then, the USPTO has designated numerous decisions in such proceedings as precedential or informative, has issued several updates to the Trial Practice Guide, and has issued guidance including the June 2022 Guidance Memorandum.

Prior Request for Comments Regarding Discretionary Institution

On October 20, 2020, the USPTO published an RFC to obtain feedback from stakeholders on case-specific approaches by the PTAB for exercising discretion on whether to institute an AIA proceeding and whether the USPTO should promulgate rules based on these approaches. *See* Request for Comments on Discretion to Institute Trials Before the Patent Trial and Appeal Board, 85 FR 66502 (Oct. 20, 2020). The USPTO published an Executive Summary in January 2021, encapsulating stakeholder feedback received from the RFC.[3] The USPTO received 822 comments from a wide range of stakeholders, including individuals, associations, law firms, companies, and three United States Senators. In view of the comments in response to the RFC and the USPTO's further experience with AIA proceedings, the USPTO intends to make policy changes through notice-and-comment rulemaking. Such rulemaking is consistent with comments received from stakeholders, made in response to the RFC as well as in other contexts, expressing a preference that key policy changes be made and formalized through rulemaking.

Director's Discretionary Institution Authority in General

By way of background, the Board institutes an AIA trial on behalf of the Director. 37 CFR 42.4(a). In deciding whether to institute an AIA trial, the Board considers, at a minimum, whether a petitioner has satisfied the relevant statutory institution standard. Sections 314(a) and 324(a) of 35 U.S.C. provide the Director with discretion to deny a petition, even when meritorious. *See, e.g.,* 35 U.S.C. 314(a) (stating ''[t]he Director may not authorize an *inter partes* review to be instituted unless . . .''); *Cuozzo,* 579 U.S. at 273 (''[T]he agency's decision to deny a petition is a matter committed to the Patent Office's discretion.''). In addition, 35

[2] *https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf.*

[3] USPTO, Executive Summary: Public Views on Discretionary Institution of AIA Proceedings (Jan. 2021). Available at *www.uspto.gov/sites/default/files/documents/USPTOExecutiveSummaryofPublicViewsonDiscretionaryInstitutiononAIAProceedingsJanuary2021.pdf.*

U.S.C. 325(d) provides that ''[i]n determining whether to institute or order a proceeding . . . , the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.''

Under 35 U.S.C. 316(a) and 326(a), the Director shall prescribe regulations for certain enumerated aspects of AIA proceedings, and under 35 U.S.C. 2(b)(2)(A), the Director may establish regulations that ''shall govern the conduct of proceedings in the Office.'' The Director's discretion to institute review of a patent is informed by 35 U.S.C. 316(b) and 326(b), which require the Director to ''consider the effect of any such regulation [under this section] on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under this chapter.''

Congress designed the AIA to improve and ensure patent quality by providing ''quick and cost-effective alternatives to litigation'' for challenging issued patents. H.R. Rep. No. 112–98, part 1, at 48 (2011), 2011 U.S.C.C.A.N. 67, 69; *see* S. Rep. No. 110–259, at 20 (2008) (explaining that the ''post-grant review system . . . will give third parties a quick, inexpensive, and reliable alternative to district court litigation to resolve questions of patent validity''). In so doing, Congress granted the USPTO ''significant power to revisit and revise earlier patent grants'' as a mechanism ''to improve patent quality and restore confidence in the presumption of validity that comes with issued patents.'' *Cuozzo,* 579 U.S. at 272 (quoting H.R. Rep. No. 112–98, part 1, at 45, 48). At the same time, Congress instructed that ''the changes made by [the AIA] are not to be used as tools for harassment or a means to prevent market entry through repeated litigation and administrative attacks on the validity of a patent,'' and ''[d]oing so would frustrate the purpose of the section as providing quick and cost effective alternatives to litigation.'' H.R. Rep. No. 112–98, at 48 (2011).

To take into account the 35 U.S.C. 316(b) and 326(b) considerations of the economy, the integrity of the patent system, and the ability of the USPTO to provide timely and cost-effective PGRs, as outlined in the AIA, the USPTO has developed factors to consider when determining whether to institute an AIA review under several different circumstances, including when: (1) additional petitions are filed by the same petitioner or sufficiently related parties challenging the same patent claims as a first petition after the patent owner has filed a preliminary response to the first petition (''serial'' or ''follow-on'' petitions); (2) a petition relies on substantially the same prior art, and/or invokes the same or substantially the same arguments, previously addressed by the USPTO in connection with the challenged patent (implicating considerations under 35 U.S.C. 325(d)); (3) more than one petition is filed by the same petitioner (or privy or real party in interest with a petitioner) at the same time as the first filed petition or up until the filing of the preliminary response in the first filed proceeding (''parallel petitions''); and (4) a petition is filed in parallel with an ongoing district court proceeding (''parallel proceedings'').

As noted above, in late 2020, the USPTO received 822 comments in response to an RFC on certain discretionary institution considerations set forth in precedential Board decisions. Comments from stakeholders generally supported discretionary institution rulemaking, although the comments differed as to the specifics. The substance of the public comments is discussed below in connection with the proposed changes.

Discussion of Changes Under Consideration

The following is a discussion of the amendments under consideration for 37 CFR part 42.

Overview

In order to create clear, predictable rules where possible, as opposed to balancing tests that decrease certainty, the USPTO is considering changes that would provide for discretionary denials of petitions in the following categories, subject to certain conditions and circumstances (and exceptions) as discussed further below:

1. Petitions filed by certain for-profit entities;

2. Petitions challenging under-resourced patent owner patents where the patentee has or is attempting to bring products to market;

3. Petitions challenging patent claims previously subject to a final adjudication upholding the patent claims against patentability challenges in district court or in post-grant proceedings before the USPTO;

4. Serial petitions;

5. Petitions raising previously addressed prior art or arguments (subject to the 35 U.S.C. 325(d) framework);

6. Parallel petitions; and

7. Petitions challenging patents subject to ongoing parallel litigation in district court.

The changes under consideration also provide for several threshold definitions that apply to one or more of these categories of petitions subject to discretionary denials. Those definitions set forth the criteria used to determine: (1) what constitutes a ''substantial relationship'' between entities sufficient to trigger or avoid discretionary denial, (2) when claim sets are deemed to have ''substantial overlap'' with challenged claims, and (3) what constitutes ''compelling merits'' sufficient to trigger an exception to discretionary denial.

Finally, five additional changes are being considered: (1) absent exceptional circumstances, requiring petitioners to file a stipulation that neither they nor their privy or real parties have filed prior post-grant proceedings (PGRs, IPRs, CBMs or ex parte reexaminations) on the challenged claims; and that if their post-grant proceeding is instituted, neither they nor their privy or real parties in interest, will challenge any of the challenged claims in a subsequent post-grant proceeding (including PGRs, IPRs and ex parte reexamination); (2) requiring petitioners to file a separate paper justifying multiple parallel petitions; (3) allowing a potential payment of a fee to enhance the word-count limits for a petition to avoid multiple parallel petitions; (4) providing for separate briefing on discretionary denial issues; and (5) requiring filing of all settlement papers when the dismissal of AIA proceedings is sought, whether pre- or post-institution.

The USPTO welcomes public comments and feedback on all changes under consideration, which are discussed in detail below. The USPTO further welcomes any responses that address the effect any of the proposals herein would have on ''the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under'' 35 U.S.C. 316 and 326. Some of the changes under consideration are set forth as alternative proposals. The USPTO appreciates feedback on the relative benefits and drawbacks, if any, of the alternatives proposed. The USPTO also invites suggestions on what, if any, additional disclosures the USPTO should require and any other considerations the USPTO should take into account that would weigh in favor of or against discretionary denial.

Threshold Definitions

''Substantial Relationship'' of Entities

The USPTO currently applies the common law formulations of ''real party in interest'' and ''privy'' to ensure that entities related to a party in an AIA proceeding are considered when evaluating conflicts and the effect of estoppel provisions. *See* Consolidated Trial Practice Guide, 12–18 (Nov. 2019). For example, relationships based on corporate structure, contract, or financial interest are often considered in identifying real parties in interest or those in privity with a party to the proceedings.

The USPTO has adopted similar considerations in the discretionary denial context. For example, in *Valve Corp.* v. *Electronic Scripting Products, Inc.,* IPR2019–00062, –00063, –00084, 2019 WL 1490575 (PTAB Apr. 2, 2019) (precedential) (*Valve I*), the Board denied institution when a party, Valve, filed multiple petitions for IPR after the denial of an IPR request of the same claims filed by the party's co-defendant in district court, whose accused products incorporated technology licensed from Valve. *Valve I,* 2019 WL 1490575, at *4–5. The Board held that when different petitioners challenge the same patent, the Board considers the relationship, if any, between those petitioners in weighing the factors in *General Plastic Co.* v. *Canon Kabushiki Kaisha,* IPR2016–01357, Paper 19 (PTAB Sept. 6, 2017) (precedential) (*General Plastic*). *Id.* The USPTO also explained, in *Valve Corp.* v. *Electronic Scripting Products, Inc.,* IPR2019–00064, –00065, –00085, 2019 WL 1965688 (PTAB May 1, 2019) (*Valve II*), that the first *General Plastic* factor applies to a later petitioner when that petitioner previously joined an instituted IPR proceeding and, therefore, was considered to have previously filed a petition directed to the same claims of the same patent. *Valve II,* 2019 WL 1965688, at *4–5.

However, the current party relationship concepts applied in the discretionary denial context are arguably too limited in certain circumstances. Accordingly, the USPTO is considering adopting a ''substantial relationship'' test to evaluate whether certain entities are sufficiently related to a party in an AIA proceeding such that discretionary denial is warranted under the criteria set forth in the changes under consideration. The substantial relationship test would be broadly construed and would encompass, but not be limited to, real parties in interest or privies of the party to the AIA proceeding, and would also include others that are significantly related to that party, including at least those entities as discussed in *Valve I* and *Valve II.*

The USPTO is also considering other proposals for deeming entities to be substantially related for purposes of discretionary denials. For example, one proposal is to consider those involved in a membership organization, where the organization files IPRs or PGRs, as having a substantial relationship with the organization. There may be instances in which entities may pool their resources to challenge a patent. For example, where multiple entities are defending infringement claims in district court litigation, or have related interests in challenging the patentability of patent claims, they may join together to file a single challenge to the subject patent claims before the PTAB. Such activities may advance the Office's mission and vision and the congressional intent behind the AIA where the entities are in privity with a party or are, themselves, real parties in interest, and where their involvement in the proceeding is consistent with the statutory provisions or the Office's rules, including those related to estoppel or multiple challenges to a patent. In the interests of transparency, the Office would require disclosure of any such relationships by a party upon filing its first paper in an IPR or PGR and would require parties to promptly file a supplemental statement if the information changes.

Another proposal under consideration is requiring a patent owner and petitioner to disclose anyone with an ownership interest in the patent owner or petitioner, any government funding related to the patent, any third-party litigation funding support (including funding for some or all of the patent owner's or petitioner's attorney fees or expenses before the PTAB or district court), and any stake any party has in the outcome of the AIA proceeding or any parallel proceedings on the challenged claims. For example, the Office could require parties to disclose beneficial ownership interests similar to what the Securities and Exchange Commission requires.

''Substantial Overlap'' Between Claim Sets

As discussed further below, for certain discretionary denial decisions the USPTO would consider whether there is ''substantial overlap'' between claim sets (for example, those previously adjudicated to not be invalid) and the challenged claims. Under the proposed changes, the Office is considering a clear, predictable definition in which claim sets are deemed to ''substantially overlap'' the challenged claims when at least one challenged claim is ''substantially the same'' as a claim in a set to which the claim is being compared. For purposes of this comparison, claims will be deemed to be ''substantially the same'' when any differences between the claims are not material to patentability. Alternatively, the Office is open to considering a more subjective test in which substantial overlap between claim sets is determined on a case-by-case basis.

The Office requests comments on other possible tests for determining when claim sets will be considered to ''substantially overlap'' the challenged claims including what degree of overlap (*i.e.,* number of claims) would amount to ''substantial overlap'' and whether one overlapping claim should be sufficient.

Effect of ''Compelling Merits'' on Discretionary Denials

The changes under consideration would provide that, in certain circumstances, when a challenge presents compelling merits the proceeding will be allowed to proceed at the Board even where the petition would otherwise potentially be a candidate for discretionary denial. A challenge presents ''compelling merits'' when the evidence of record before the Board at the institution stage is highly likely to lead to a conclusion that one or more claims are unpatentable by a preponderance of the evidence. *See OpenSky Indus., LLC* v. *VLSI Tech. LLC,* IPR2021–01064, Paper 102 at 49 (PTAB Oct. 4, 2022) (Director decision, precedential) (describing compelling merits as those that ''plainly lead to a conclusion that one or more claims are unpatentable,'' and noting that such standard can be met only ''if it is highly likely that the petitioner would prevail with respect to at least one challenged claim''). Under this test, the petitioner has the burden of presenting evidence at the institution stage that leaves the Board with a firm belief or conviction that it is highly likely that the petitioner would prevail with respect to at least one challenged claim. Consistent with the intent of the AIA and our mission, it is only this high certainty that would compel the Board to review claims for the public benefit when other considerations favor discretionary denial.

A compelling merits standard is a higher standard than the reasonable likelihood required for the institution of an IPR under 35 U.S.C. 314(a), and higher than more likely than not

required for institution of a PGR under 35 U.S.C. 324(a). The compelling merits standard is also higher than the preponderance of the evidence standard (more likely than not) that applies to final determinations of patentability at the close of trial. But because all relevant evidence likely will not have been adduced at the point of institution, a determination of ''compelling merits'' at the institution stage should not be taken as a signal to the ultimate conclusion after trial. *See OpenSky Indus.,* IPR2021–01064, Paper 102 at 49. The Board would provide its reasoning in determining whether the merits of a petition are compelling. Further, the Board would not reach any issue regarding ''compelling merits'' until all other discretionary denial issues have been evaluated and the petition is a candidate for discretionary denial.

The compelling merits test seeks to strike a balance among the competing concerns of avoiding potentially conflicting outcomes, avoiding wasteful parallel proceedings, protecting against patent owner harassment, and strengthening the patent system by allowing the review of patents challenged with a sufficiently strong initial merits showing of unpatentability. The patent system and the public could benefit from instituting challenges with a showing of unpatentability by compelling merits. The USPTO is also considering whether the compelling merits standard is the most appropriate standard for the Board to apply at the institution stage when determining if the merits of a petition are sufficiently strong to avoid discretionary denial.

The Office also requests comments on how the compelling merits standard would apply if the patent owner raises a factual question that cannot be resolved at institution (*e.g.,* presenting evidence of secondary considerations of nonobviousness). In particular, the Office seeks feedback on what presumptions should apply and whether pre-institution discovery would be appropriate. The Office is considering whether, in assessing compelling merits, the Office should adopt a test whereby (1) the record will be viewed in the light most favorable to the patent owner and (2) the Board will draw all reasonable inferences in favor of patent owner.

Lastly, the Office is considering whether the compelling merits standard should apply as an exception to all of the bases for discretionary denial discussed below and, if not, which ones it should and should not apply to. Under current USPTO guidance, the compelling merits test does not apply when certain entities are attempting to challenge a patent after a final adjudication of patentability in post-grant proceedings or in district court or when serial challenges are being made by the same party or a real party in interest or privy.

Discretionary Denials Under 35 U.S.C. 314(a), 324(a), and 325(d)

In the AIA, Congress established post-grant proceedings, including IPR, PGR, and CBM proceedings,[4] to improve and ensure patent quality by providing ''quick and cost-effective alternatives to litigation'' for challenging issued patents. H.R. Rep. No. 112–98, part 1, at 48; *see also* S. Rep. No. 110–259, at 20 (explaining that the ''post-grant review system . . . will give third parties a quick, inexpensive, and reliable alternative to district court litigation to resolve questions of patent validity''). Congress granted the Office ''significant power to revisit and revise earlier patent grants'' as a mechanism ''to improve patent quality and restore confidence in the presumption of validity that comes with issued patents.'' *Cuozzo,* 579 U.S. at 272 (quoting H.R. Rep. No. 112–98, part 1, at 45, 48). Given those objectives, the changes under consideration, in addition to providing clear rules for when the Board would exercise its discretion to deny institution, would also clarify that the Office always retains discretion to deny institution as a sanction or in response to improper conduct or gamesmanship.

Limitations on Nonmarket Competitors—Petitions Filed by Certain For-Profit Entities

The Office received feedback in the comments responsive to the RFC expressing concerns that some petitions are filed by for-profit entities who had not been sued for infringement and may not have an apparent reason for challenging validity of patent claims. The USPTO is likewise concerned that certain for-profit entities may use the IPR and PGR processes not to advance the mission and vision of the Office to promote innovation or the intent behind the AIA to provide a less-expensive alternative to district court litigation, but instead to advance other interests. To curb the potential for abusive filings, the USPTO is considering changes that would limit institution on filings by for-profit, non-competitive entities that in essence seek to shield the actual real parties in interest and privies from statutory estoppel provisions. The changes under consideration would make clear that the Board would discretionarily deny any petition for IPR or PGR filed by an entity that: (1) is a for-profit entity; (2) has not been sued on the challenged patent or has not been threatened with infringement of the challenged patent in a manner sufficient to give rise to declaratory judgment standing; (3) is not otherwise an entity that is practicing, or could be alleged to practice, in the field of the challenged patent with a product or service on the market or with a product or service in which the party has invested to bring to market; and (4) does not have a substantial relationship with an entity that falls outside the scope of elements (1)–(3). The Office contemplates defining ''for-profit entities'' as entities that do not qualify for tax-exempt status with the Internal Revenue Service.

The USPTO is considering defining ''for-profit'' entities to include any entity that is a real party in interest with, or in privy with, a for-profit entity. The Office is alternatively considering ''for-profit'' entities to additionally include any parties with a substantial relationship with a for-profit entity.

The USPTO is seeking feedback on whether it should discretionarily deny an IPR or PGR if the patent owner provides a covenant not to sue to a for-profit petitioner and its customers prior to initiating litigation against those entities. In addition, the USPTO requests comments on whether it should consider any other covenant or stipulation in determining whether to exercise discretion to deny institution.

As to the second element, ''has not been sued on the challenged patent,'' the Office is considering whether the element should be further defined such that the Board will not discretionarily deny petitions filed by entities that have been threatened with infringement of the challenged patent in a manner sufficient to give rise to declaratory judgment standing. Alternatively, the Office is open to considering whether a petition should be denied where a petitioner lacks declaratory judgment standing, but the petitioner has a reasonable apprehension of suit based on the prior litigation conduct of the patentee asserting the patent or related patents against similarly situated companies.

Regarding the third element, under this proposal the Board is considering the metes and bounds of prior attempts to commercialize and how to define the term so that it encompasses efforts to bring products to market. The Office requests comments on whether and

[4] The transitional covered business method patent review program expired on September 16, 2020, in accordance with AIA 18(a)(3). Although the program has sunset, existing CBM proceedings based on petitions filed before September 16, 2020, are still pending.

when activity by another should inure to the benefit of a petitioner. The Office is proposing the language ''field of the challenged patent'' to avoid a dispute about whether the petitioner practices the challenged claims or patent.

Regarding the fourth element, the USPTO understands there may be instances in which entities may pool resources to challenge a patent. For example, where multiple entities are defending infringement claims in district court litigation, or have related interests in challenging the patentability of patent claims, they may join together to challenge the subject patent claims before the PTAB. Such activity may advance the Office's mission and vision and the congressional intent behind the AIA so long as the entities are real parties in interest or in privy, such that the activity does not work to avoid the effect of statutory provisions or the Office's rules, including those related to estoppel and/or multiple challenges to a patent.

The USPTO is also considering whether, even if the petitioner is an entity satisfying the four elements discussed above, the Office should institute petitions where the petitioner satisfies a heightened standard of demonstrating compelling merits.

Micro and Small Entities: Protecting Under-Resourced Inventors and Petitioners

The USPTO recognizes that the contributions of startups, small businesses, and independent inventors are vital to the development of a variety of important American industries. They are the engines that, in many cases, drive innovation. The Office also recognizes that such entities may have limited resources that are necessarily devoted to crucial activities such as research, development, and manufacturing.

Such limited resources may impact the perceived fairness of post-grant reviews. For example, some stakeholders in response to the RFC expressed concern that under-resourced inventors are unable to afford the costs involved in defending patents in post-grant review. Some stakeholders advocating for small businesses and individual inventors urged the Office to take into account the financial resources of a patent owner, and to limit reviews of patents owned by under-resourced entities who lack funding to defend challenges to their patents but who have sought to bring their inventions to market either themselves or through a licensee.

Because providing support for startups, small businesses, and independent inventors is one of the major priorities for the USPTO, the Office proposes to limit the impact of AIA post-grant proceedings on these patent owners by discretionarily denying petitions for an IPR or PGR when certain other conditions are met.

Specifically, under one proposal, absent compelling merits, the status of the patent owner would lead to a denial of institution when: (1) the patent owner had claimed micro entity or small entity status at issuance of the challenged patent and timely requested discretionary denial when presented with the opportunity; (2) during the calendar year preceding the filing of the petition, the patent owner did not exceed eight times the micro entity gross income level under 37 CFR 1.29(a)(3); and (3) at the time the petition was filed, the patent owner (or a licensee of the patent that started practicing the patent after becoming a licensee) was commercializing the subject matter of a challenged claim.

Under this proposal, to allow for growth between the time the patent issued and the filing of the petition, the changes under consideration would apply to entities that were micro or small entities at patent issuance but are under-resourced (as defined by a gross income requirement) at the time of filing the petition. The reduction to practice and commercialization requirement is intended to encourage the creation of new businesses and competition in the marketplace.

The USPTO welcomes any other proposals that will provide protections for startups, small businesses, and independent inventors, and recognizes it is not only those with limited resources that benefit our economy. At the same time, the Office wants to address competing concerns about spurious litigation and abusive practices. Due to the large variety of business models, it is difficult to draw widely applicable bright lines. The Office welcomes proposals to protect startups, small businesses, and independent inventors beyond those who are under-resourced to the extent the remainder of these proposed rules do not provide adequate protection. As an example, the Office is considering whether a multiplier of eight times the micro entity gross income level, or some other multiplier, would be appropriate to help the Office to ensure that it is reaching under-resourced individual inventors and start-ups (and not those funded or otherwise supported by an entity who is neither). The Office also is considering other possible approaches, including whether a limited-resource entity should be required at the time of the petition to meet the micro or small entity provisions under 37 CFR 1.27 and 1.29. The Office welcomes comments on how the office should define ''under-resourced'' and whether the Office should include other criteria other than income. For example, the Office could consider a petitioner under-resourced if, at the time of petition filing, the petitioner is a small or micro entity not exceeding a specified gross income level and has been accused of making, using, selling or offering to sell in the United States, or importing into the United States the subject matter of a challenged claim. An accused petitioner is a petitioner having declaratory judgment standing under 28 U.S.C. 2201(a). *See MedImmune, Inc.* v. *Genentech, Inc.,* 549 U.S. 118 (2007).

To protect against government-owned or -funded entities using this section to attempt to insulate their patents, and/or to avoid abuse, for any measure that inures to the benefit of patent owners with limited resources, a consideration could include determining whether the small or micro entity has government funding. The Office could also consider third-party litigation funding support, including funding for some or all of the patent owner's attorney fees or expenses before the PTAB or district court. The Board could also consider the resources of anyone with an ownership interest in the patent owner and anyone with any stake in the outcome of the AIA proceeding or any parallel proceedings on the challenged claims. For example, a small or micro entity requesting denial of institution based on limited resources could be required to disclose the identity of any third-party funders, including U.S. or foreign government funding; provide a brief description of the financial interest of the third-party funder; and state whether the funder's approval is required for settlement or any positions taken before the PTAB. The PTAB could also inquire into all ownership interests to ensure this process is not abused. This information would not be used in any way other than to determine if an entity is truly under-resourced.

Other options the Office is considering include excluding from consideration the activities of licensees in certain circumstances. The Office welcomes comments on whether certain licenses activities should be excluded, keeping in mind that the USPTO wants to encourage bringing ideas to market whether directly or through technology transfer, licensing, or cross-licensing activities.

Additionally, the Office is considering how to proceed with discretionary

denials where a petitioner is under-resourced. The Office welcomes comments on whether the resource status of a petitioner should be a consideration when analyzing discretionary denials.

Prior Adjudications Upholding Validity

Comments by some stakeholders in response to the RFC emphasized that if a district court reaches a decision on patentability of a patent claim before a final decision can be reached in a parallel IPR proceeding, the benefits of the IPR (a cheaper, quicker, more efficient alternative to litigation) are not likely to be realized. According to these stakeholders, this point is even more salient in instances in which a patent claim has already been subject to an adjudication upholding the validity of the claim prior to the filing of a petition challenging that claim.

The changes under consideration would provide that prior final adjudications by a district court or by the Office in AIA post-grant proceedings upholding the validity of claims that substantially overlap the challenged claims will result in discretionary denial, except in cases in which the petitioner has standing to challenge the validity of the claims in district court or intends to pursue commercialization of a product or service in the field of the invention of a challenged claim, was not a real party in interest or privy to the party previously challenging one or more of the challenged claims (unless any earlier challenge was resolved for reasons not materially related to the merits of the petition, *e.g.,* a post-grant proceeding that was discretionarily denied or otherwise was not evaluated on the merits); and meets a heightened burden of compelling merits.

For clarity, the changes under consideration would also add a definition of ''final adjudication'' as a decision on the merits by a district court that is final within the meaning of 28 U.S.C. 1295(a)(1). This means that only prior adjudications of invalidity challenges in district court that are on the merits and are part of a final, appealable judgment would be within the scope of the changes under consideration. Similarly, a final adjudication at the Office would be a final, appealable decision of the Office. The Board should first determine whether a petitioner meets the first three criteria—standing, intent to commercialize and privy/real party in interest—before moving to the compelling merits analysis.

These considerations do not replace other limitations on serial petitions or other mechanisms for discretionary denial, or the *Fintiv* analysis itself if there is, additionally, a parallel proceeding ongoing, but present an additional, independent basis for discretionary denial.

The Office is also considering whether to extend this proposal to including prior adjudications of validity through ex parte reexaminations requested by a third party other than the patent owner or the patent owner's real party in interest or privy.

Serial Petitions

Serial petitioning occurs when additional petitions are filed challenging at least one claim previously challenged in a first petition: (1) after the filing of a preliminary response in a first petition challenging the same claims; or (2) if no preliminary response to the first petition is filed, after the expiration of the period for filing such a response under 37 CFR 42.107(b) or as otherwise ordered.[5] In responding to the RFC, some stakeholders expressed concern that duplicative attacks on the same patent through the IPR process devalue the patent. The Office is considering revising the rules to address serial petitioning.

In *General Plastic Co.* v. *Canon Kabushiki Kaisha,* IPR2016–01357, 2017 WL 3917706, at *7 (PTAB Sept. 6, 2017) (precedential), the Board referred to the goals of the AIA but also ''recognize[d] the potential for abuse of the review process by repeated attacks on patents.'' 2017 WL 3917706, at *7 (citing H.R. Rep. No. 112–98, part 1, at 48 (2011)). To aid the Board's assessment of ''the potential impacts on both the efficiency of the *inter partes* review process and the fundamental fairness of the process for all parties,'' *General Plastic* identified a number of non-exclusive factors that the Board will consider in exercising discretion in instituting an IPR, especially as to ''follow-on'' petitions challenging the same patent as challenged previously in an IPR, PGR, or CBM proceeding. *Id.* at *8. The *General Plastic* non-exclusive factors include: (1) whether the same petitioner previously filed a petition directed to the same claims of the same patent; (2) whether, at the time of filing of the first petition, the petitioner knew of the prior art asserted in the second petition or should have known of it; (3) whether, at the time of filing of the second petition, the petitioner had already received a patent owner preliminary response (if filed) to the first petition or received the Board's decision on whether to institute review in the first petition; (4) the length of time that elapsed between the time the petitioner learned of the prior art asserted in the second petition and the filing of the second petition; and (5) whether the petitioner provides an adequate explanation for the time elapsed between the filings of multiple petitions directed to the same claims of the same patent. *Id.* at *7. Additional factors include (6) the finite resources of the Board; and (7) the requirement to issue a final determination not later than 1 year after the date on which the Director notices institution of review. *Id.*

Since *General Plastic,* the Office has explained that the application of the first *General Plastic* factor is not limited to instances in which multiple petitions are filed by the same petitioner. For example, in *Valve I,* the Board denied institution when a party filed serial petitions for IPR after the denial of an IPR request of the same claims filed by the party's co-defendant. *Valve I,* 2019 WL 1490575, at *4–5. The Board held that when different petitioners challenge the same patent, the Board considers the relationship, if any, between those petitioners when weighing the *General Plastic* factors. *Id.* The Office also explained, in *Valve II,* that the first *General Plastic* factor applies to a later petitioner when that petitioner previously joined an instituted IPR proceeding and, therefore, was considered to have previously filed a petition directed to the same claims of the same patent. *Valve II,* 2019 WL 1965688, at *4–5. The relationships between petitioners in serial petition scenarios depend on the circumstances. Additionally, ''*General Plastic* factor 1 must be read in conjunction with factors 2 and 3.'' *Code 200* v. *Bright Data Ltd.,* IPR2022–00861, Paper 18 at 5 (PTAB Aug. 23, 2022) (Director decision, precedential). ''Where the first-filed petition under factor 1 was discretionarily denied or otherwise was not evaluated on the merits, factors 1–3 only weigh in favor of discretionary denial when there are 'road-mapping' concerns under factor 3 or other concerns under factor 2.'' *Id.*

The USPTO is considering replacing factors 1–7 with the following test, which incorporates the USPTO's case law on factor 1. Under the proposal, the Board will discretionarily deny—subject to two exceptions—any serial IPR or PGR petition [6] (with at least one

[5] *See* Analysis of multiple petitions in AIA Proceedings (December 2020 update), *www.uspto.gov/sites/default/files/documents/multiple_petition__mta_study_.pdf* (noting that in fiscal year (FY) 2020, about 2% of AIA challenges (21 out of 938) were serial petitions, and a fraction of those (7) were successful); *see also id.* at slides 8 and 9 (describing what led to a successful serial petition in FY 2020).

challenged claim that is the same as a challenged claim in a previously filed IPR, PGR, or CBM petition) that is filed by one of the following: the same petitioner, a real party in interest or privy to that petitioner, a party with a significant relationship to that petitioner (as discussed in *Valve I*[7]), or a party who previously joined an instituted IPR or PGR filed by that petitioner (as discussed in *Valve I*[8]). The two exceptions are that the Board will not discretionarily deny such a petition when: (1) the earlier petition was resolved for reasons not materially related to the merits of the petition (*e.g.,* was discretionarily denied or otherwise was not evaluated on the merits); or (2) exceptional circumstances are shown. Exceptional circumstances may, for example, include (a) situations in which a patentee changes the scope of the claims, for example, through amendment or a proposed claim construction; (b) situations where, at the time of filing of the first petition, the petitioner reasonably could not have known of or found the prior art asserted in the serial petition; or (c) situations in which the petitioner raises a new statutory challenge (35 U.S.C. 101, 112, or 102/103) that was not in the prior petition and has a justifiable explanation for why they did not raise the statutory challenge in the earlier petition.

This approach to serial petitions could simplify the process for analyzing such petitions and provide greater clarity and certainty to the parties regarding whether subsequent petitions will be instituted. The Office requests comments on this approach, including how it should define ''exceptional circumstances'' and whether it should use the ''at least one overlapping claim'' test or whether it should use the ''substantial overlap'' of claims test.

The Office is also considering whether to apply the substantial relationship test instead of limiting discretionary denial of serial petitions to those filed by the same petitioner, a real party in interest or privy to that petitioner, a party with a significant relationship to that petitioner, as discussed in *Valve I,* or a party who previously joined an instituted IPR or PGR filed by that petitioner, as discussed in *Valve II.* The Office also welcomes thoughts on whether the Office should discretionarily deny any serial petition, regardless of the relationship to the first petitioner, unless the petition meets the compelling merits test. The Office also welcomes comments on how the Office should define exceptional circumstances.

35 U.S.C. 325(d) Framework

Under 35 U.S.C. 325(d), in ''determining whether to institute [an AIA post-grant proceeding] the Director[6] may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.''

In evaluating the exercise of discretion to deny institution under 35 U.S.C. 325(d), the Board applies the two-part framework set forth in the precedential *Advanced Bionics* decision, which entails: (1) determining whether the same or substantially the same art was previously presented to the Office or whether the same or substantially the same arguments were previously presented to the Office; and (2) if either condition of the first part of the framework is satisfied, determining whether the petitioner has demonstrated that the Office erred in a manner material to the patentability of challenged claims. *Advanced Bionics, LLC* v. *Med-El Elektromedizinische Geräte GmbH,* IPR2019–01469, Paper 6 at 8 (PTAB Feb. 13, 2020) (precedential).

In applying the two-part framework, the Board has also considered several non-exclusive factors set forth in the precedential *Becton, Dickinson* decision, including (a) the similarities and material differences between the asserted art and the prior art involved during examination; (b) the cumulative nature of the asserted art and the prior art evaluated during examination; (c) the extent to which the asserted art was evaluated during examination, including whether the prior art was the basis for rejection; (d) the extent of the overlap between the arguments made during examination and the manner in which the petitioner relies on the prior art or the patent owner distinguishes the prior art; (e) whether the petitioner has pointed out sufficiently how the examiner erred in its evaluation of the asserted prior art; and (f) the extent to which additional evidence and facts presented in the petition warrant reconsideration of the prior art or arguments. *Becton, Dickinson & Co.* v. *B. Braun Melsungen AG,* IPR2017–01586, Paper 8 at 17–18 (PTAB Dec. 15, 2017) (precedential as to section III.C.5, first paragraph).

Factors (a), (b), and (d) of *Becton, Dickinson* relate to whether the art or arguments presented in the petition are the same or substantially the same as those previously presented to the Office. *Advanced Bionics,* Paper 6 at 10. Factors (c), (e), and (f) ''relate to whether the petitioner has demonstrated a material error by the Office'' in its prior consideration of that art or arguments. *Id.* Under *Advanced Bionics,* only if the same or substantially the same art or arguments were previously presented to the USPTO does the Office then consider whether the petitioner has demonstrated a material error by the Office. *Id.*

Although 35 U.S.C. 325(d) was not the specific focus of the RFC, in response to a general question about the Board's use of discretion some stakeholders suggested that the Office promulgate rules for evaluating whether to proceed with an AIA review in view of 35 U.S.C. 325(d) based on the framework set forth in *Advanced Bionics* and *Becton, Dickinson.*[7] To promote more consistency, clarity, and efficiency, the USPTO is proposing to promulgate rules directed at how the Board will conduct an analysis under 35 U.S.C. 325(d). While the considered changes reflect many of the underlying principles of *Advanced Bionics* and *Becton, Dickinson,* the Office intends to further clarify the application of 35 U.S.C. 325(d) to supersede the guidance provided in these cases in order to implement the intent of the AIA—to improve patent robustness and reliability—while providing appropriate deference to USPTO decisions on art or arguments previously before the Office.

The USPTO is considering limiting the application of 35 U.S.C. 325(d) to situations in which the Office previously addressed the prior art or arguments. Art or arguments would be deemed to have been previously addressed where the Office evaluated the art or arguments and articulated its consideration of the art or arguments in the record. For example, for the art to be deemed ''previously addressed,'' the claims must have been distinguished over the art in the record where the art was the basis of a rejection where the rejection was withdrawn or overcome by an amendment, was distinguished in a notice of allowance, or was discussed during an examiner interview. The mere citation of a reference on an Information Disclosure Statement (whether or not checked off by an examiner), in a Notice of References Cited (PTO–892) during prosecution of the challenged patent, or in search results would not be considered sufficient to be deemed ''previously addressed'' for purposes of 35 U.S.C. 325(d). Requiring that the art

[6] The Board institutes trial on behalf of the Director. 37 CFR 42.4(a).

[7] Response from the American Intellectual Property Law Association at 10–11; response from the Intellectual Property Owners Association at 6–7.

be previously addressed increases efficiency and lowers the cost of proceedings for parties and the Board by providing a clear test that reduces unnecessary briefing.

The Office seeks to clarify that 35 U.S.C. 325(d) applies to art or arguments that were previously addressed during proceedings pertaining to: (1) the challenged patent; or (2) any parent application or other family member application of a challenged patent, but only if the claims of the parent application or other family member application contain or contained substantially the same limitations as those at issue in the challenged claims. If a patent owner makes an argument under 35 U.S.C. 325(d) based on art or arguments presented in a related application, the patent owner should identify how the claims of the related application and the challenged patent are substantially the same. For example, the patent owner may show that the challenged claims received an obviousness-type double patenting rejection over the claims of the parent and a terminal disclaimer was filed to overcome the rejection.

In the current proposal, 35 U.S.C. 325(d) would apply to art or arguments from related applications (if the claims are substantially the same) but would not apply to art or arguments that were addressed in any non-related applications. However, the Office is soliciting comments on whether there are benefits to limiting the application of 35 U.S.C. 325(d) to art or arguments that were previously addressed during proceedings pertaining only to the challenged patent (and not to any parent or related application, including child applications) or, alternatively, expanding the application of 35 U.S.C. 325(d) to non-related applications that were before the Office prior to the issuance of the challenged patent.

Further, under the proposal, prior art will be considered to be ''substantially the same'' only if the disclosure in the prior art previously addressed contains the same teaching relied upon in the petition and that teaching was addressed by the Office, whether it be a patent or a printed publication in an IPR or another type of prior art available in a PGR. For example, a U.S. national stage filing of a Patent Cooperation Treaty (PCT) application under 35 U.S.C. 371 could be considered to be ''substantially the same'' art as the PCT application if it has the same disclosure that was previously addressed in the PCT application. Similarly, two non-patent references could be considered to be ''substantially the same'' if they both teach the same claim limitation in the same way as the challenged claim.

The Office also seeks to clarify that 35 U.S.C. 325(d) will apply to any proceedings in which the art or arguments were previously addressed, including prosecution, reissue, ex parte reexamination, inter partes reexamination, and AIA post-grant proceedings, and appeals of the same, involving the challenged patent or a related patent or application.

The proposals under consideration provide that if the patent owner meets its burden in showing that the same or substantially the same art or arguments were previously addressed by the Office, then the Board will not institute a trial unless the petitioner establishes material error by the Office. Examples of a material error may include misapprehending or overlooking specific teachings of the relevant prior art where those teachings impact patentability of the challenged claims, including experimental evidence demonstrating an inherent feature of the prior art or rebutting a showing of unexpected results. Another example may include an error of law, such as misconstruing a claim term, where the construction impacts the patentability of the challenged claims. It will not be considered material error if reasonable minds can disagree regarding the purported treatment of the art or arguments.

Parallel Petitions

With regard to parallel petitions filed against the same patent by the same petitioner or by a petitioner who has a substantial relationship with another petitioner challenging the same patent, the changes under consideration would provide that, when determining whether to institute an IPR or PGR, the Board will not institute parallel petitions unless the petitioner has made a showing of good cause as to why parallel petitions are necessary.

Based on the USPTO's experience with administering the AIA, the Office finds it unlikely that circumstances will arise in which three or more petitions filed by a petitioner with respect to a particular patent will be appropriate. For example, the Office observed that for FY 2021 1,087 out of 1,136 patents challenged (96%) were subject to only one or two petitions, and that 49 out of 1,136 patents challenged (4%) were subject to three or more petitions. *See also* Analysis of multiple petitions in AIA Proceedings (December 2020 update), *www.uspto.gov/sites/default/files/documents/multiple_petition__mta_study_.pdf* (noting that in FY 2020, 15% of AIA challenges (145 out of 938) were parallel petitions, and only 30% of those (43) were successful). Further, two or more petitions filed against the same patent at or about the same time may place a substantial and unnecessary burden on the patent owner and could raise fairness, timing, and efficiency concerns. *See* 35 U.S.C. 316(b), 326(b).

Nevertheless, the Office recognizes that there may be circumstances in which more than one petition may be necessary, including, for example, when there is a dispute about a priority date or two different claim constructions, requiring arguments under multiple prior art references or mutually exclusive unpatentability theories. *See* Consolidated Trial Practice Guide, 59 (Nov. 2019). In such circumstances, one potential outcome of separating the alternative theories into different petitions, which would benefit patentees as well as petitioners, is that it would allow the Board to deny petitions with non-meritorious theories, such that the instituted AIA trial and related appeal to the Federal Circuit and the Supreme Court, if any, will be focused only on the meritorious theories, thereby eliminating the cost and burden of an AIA trial and appeal on rejected theories. If all of the theories were presented in only one petition, the Board would be required to either institute on all grounds raised in the petition or deny the petition in its entirety. *SAS Institute Inc.* v. *Iancu,* 138 S. Ct. 1348, 1359–60 (2018); *PGS Geophysical AS* v. *Iancu,* 891 F.3d 1354, 1359–62 (Fed. Cir. 2018); *Adidas AG* v. *Nike, Inc.,* 894 F.3d 1256, 1258 (Fed. Cir. 2018).

In responding to the RFC, many stakeholders supported rulemaking to provide additional clarity and predictability that would set forth specific circumstances in which the Director would consider institution of parallel petitions, including, for example, those considerations set forth in the 2019 Consolidated Trial Practice Guide, alternative claim constructions, a large number of claims asserted in related litigation, the complexity of technology, numerous limitations in claims, a large number of different claimed embodiments, and a large number of grounds per challenged claim(s). Some stakeholders recommended that, given the Office's restrictive word-count limits, additional parallel petitions are needed, and suggested requiring the petitioner to separately justify any second or subsequent parallel petition.

Additionally, some stakeholders encouraged the Office to distinguish parallel-petition situations from serial-petition situations to promote consistent

treatment. Some stakeholders recommended defining parallel petitions as two or more petitions filed before a preliminary response is filed regarding the earlier petition on the same patent.

Further, some stakeholders advocated that, with respect to the restrictive word-count limit, the Office should allow the petitioner to pay additional fees for a higher word-count limit or create a good cause exception to the word-count limit. Some stakeholders also suggested excluding sections of the petition and the preliminary response that address discretionary denial issues from the word-count limit.

The USPTO is considering changes to provide that, instead of filing multiple petitions, a petitioner may pay additional fees for a higher word-count limit. In particular, the Office could allow, for additional fees (*e.g.,* an additional 50% or 100%), higher word-count limits (*e.g.,* an additional 50% or 100%) for the petition. If a petitioner pays the fees for filing a petition with a higher word-count limit (*e.g.,* an additional 50%), the patent owner preliminary response, patent owner response, reply to patent owner response, and sur-reply may be filed with proportionally higher word-count limits (*e.g.,* an additional 50%) at no additional charge to either party. Under this change, a petitioner may file effectively two petitions as one long petition equal in length to two current petitions. Filing more than one petition with a higher word-count limit (*i.e.,* two or more long parallel petitions) challenging the same patent by the same petitioner, however, would not be permitted.

The Office also is considering an additional option to provide that, when determining whether to institute an IPR or PGR, the Board will not institute parallel petitions unless the petitioner has made a showing of good cause as to why parallel petitions are necessary. To aid the Board in determining whether more than one petition (*i.e.,* a parallel petition) is necessary (*e.g.,* whether a showing of good cause exists), a petitioner that files two or more petitions challenging the same patent would, in a separate five-page paper filed with the petitions, identify: (1) a ranking of the petitions in the order in which it wishes the Board to consider the merits, if the Board uses its discretion to institute any of the petitions; and (2) a succinct explanation of the differences between the petitions, why the issues addressed by the differences in the petitions are material, and why the Board should exercise its discretion to institute additional petitions if it identifies one petition that satisfies the petitioner's burden under 35 U.S.C. 314(a) or 324(a). The patent owner may file a response to the ranking in a separate five-page paper filed with each preliminary response.

The Office also is considering changes that would allow the Board, when evaluating the petitioner's good cause showing as to why more than one petition is necessary, to consider the following factors: (1) whether the patent owner has asserted a large number of claims in the parallel litigation; (2) whether the petitioner is challenging a large number of claims; (3) whether there is a dispute about a priority date requiring arguments under multiple prior art references; (4) whether there are alternative claim constructions that require different prior art references or mutually exclusive grounds; (5) whether the petitioner lacks sufficient information at the time of filing the petition, *e.g.,* the patent owner has not construed the claims or provided specific information as to the allegedly infringed claims; (6) whether there are a large number of claimed embodiments challenged, *e.g.,* composition claims, method of making claims, and method of use claims; (7) the complexity of the technology in the case; and (8) the strength of the merits of the petition.

Also under consideration are changes to provide that ''parallel petitions'' means two or more petitions that: (1) challenge the same patent by the petitioner or by a petitioner who has a substantial relationship with another petitioner challenging the same patent; and (2) are filed on or before (a) the filing date of a preliminary response to the first of two or more petitions, or (b) the due date set forth in 42.107(b) for filing a preliminary response to the first petition, if no preliminary response to the first petition is filed.

The Office requests feedback as to whether one petition for challenging a patent would be sufficient in most situations, including those suggested by the stakeholders in response to the RFC, if the petitioner is allowed to purchase higher word-count limits and also allowed to submit a separate paper to address discretionary denial issues, as discussed below, preserving word count for the merits. The Office also seeks feedback on whether the same requirements should or should not apply to both IPRs and PGRs. Additionally, the Office requests input on any modifications or alternative definitions for ''parallel petitions'' that would provide further clarity.

Parallel Litigation

In the case of a parallel district court action in which a trial adjudicating the patentability of the challenged claims has not already concluded at the time of an IPR institution decision, the USPTO is proposing rules to install *Apple* v. *Fintiv* and related guidance, with additional proposed reforms.

The AIA contains several provisions that function to minimize overlap between district court litigation and AIA proceedings in the Office. For example, the AIA provides that a petitioner may not file a civil action in district court challenging the validity of a patent claim prior to filing a petition asking the Office to institute an IPR or PGR of the same patent. *See* 35 U.S.C. 315(a)(1), 325(a)(1). Similarly, an IPR may not be instituted on a petition filed more than one year after the date on which the petitioner, a real party in interest, or a privy of the petitioner is served with a complaint alleging infringement of the patent, except under limited circumstances, which the Office is separately reconsidering, where the petition is accompanied by a request for joinder. 35 U.S.C. 315(b). Further, if a petitioner or real party in interest files a civil action challenging the validity of a patent claim after an IPR or PGR is instituted, the civil action will be stayed under most circumstances. *See* 35 U.S.C. 315(a)(2), 325(a)(2). In situations in which the petitioner is not barred by statute from pursuing an AIA proceeding in parallel with district court litigation, district courts have discretion to stay the parallel litigation in order to minimize duplicative efforts.

In contrast, the statutory deadlines governing the issuance of decisions on institution and final written decisions oftentimes make stays of AIA proceedings impractical. *See* 35 U.S.C. 314(b), 316(a)(11), 324(c), 326(a)(11). The Office, however, retains discretion under 35 U.S.C. 314(a) and 324(a) to deny institution of an IPR or PGR in circumstances in which parallel proceedings would result in significant inefficiency or in which there is gamesmanship or harassment. The Office has exercised that discretion to reduce overlap with parallel proceedings, particularly when trial in a parallel court proceeding would precede a final written decision from the Office. *See, e.g., Fintiv,* 2020 WL 2126495, at *2–7 (summarizing the factors the Office has considered when a patent owner argues for discretionary denial due to an earlier court trial date).

As noted, the Office received 822 comments in response to the RFC on the *Fintiv* factors and other aspects of AIA

proceedings. Comments from stakeholders in response to the RFC generally supported rulemaking with respect to discretionary denial, although the comments differed as to the specifics. In general, proponents of the *Fintiv* approach argued that petitioners should be required to choose a venue to avoid the expense for patent owners, especially independent inventors and small businesses, of participating in two proceedings addressing the same issues at the same time. They also argued that allowing multiple challenges destabilizes the patent system and violates the intent of Congress for AIA proceedings to be an alternative to district court litigation. These proponents favored litigation in district courts because district courts use a higher burden of proof, including the presumption of patent validity, and provide access to a jury.

In contrast, those opposed to the *Fintiv* approach argued that *Fintiv* incentivizes district court forum shopping by encouraging the filing of lawsuits in venues in which judges are quicker to schedule trials, even if those trial dates may not hold. They also argued that *Fintiv* is contrary to the explicit statutory one-year time frame permitted for a petitioner to file a petition after being served with a complaint charging infringement. *Fintiv* opponents further argued that the Office should not exercise discretion to deny institution of a timely filed, meritorious petition. They favored resolving patentability disputes before the PTAB, noting that it is a less expensive, more expert forum with legally and technically trained judges, and has a lower burden of proof.

On June 21, 2022, as the Office considered rulemaking on discretionary denials, the Director issued the Guidance Memorandum, which contains ''several clarifications . . . to the PTAB's current application of *Fintiv* to discretionary institution where there is parallel litigation.'' As outlined in the Guidance Memorandum, the Board's current practice is not to deny institution of an IPR under *Fintiv:* (1) when a petition presents compelling merits of unpatentability; (2) when a request for denial under *Fintiv* is based on a parallel International Trade Commission (ITC) proceeding; or (3) when a petitioner stipulates not to pursue in a parallel district court proceeding the same grounds as those in the petition or any grounds that could have reasonably been raised in the petition. Additionally, when the Board applies *Fintiv* factor 2, concerning the proximity of the district court trial date, the Board currently weighs this factor against exercising discretion to deny institution if the projected district court trial date, based on median time-to-trial data, is around the same time as or after the projected statutory deadline for the Board's final written decision.

Even if the Board does not deny institution under *Fintiv,* it retains discretion to deny institution for other reasons under 35 U.S.C. 314(a), 324(a), and 325(d). For example, the Guidance Memorandum makes clear that the Board may deny institution if other pertinent circumstances are present, such as abuse of process by a petitioner. The Office contemplates that the Board would retain the authority to deny institution in such circumstances.

Parallel Proceedings—Denial Unavailable

(1) Parallel PGR and District Court Proceedings

Congress expressed a premium on the value of PGRs, given the ability of those proceedings to explore more patentability issues early in patent life. More specifically, PGRs, unlike IPRs, may only be filed within nine months from the grant of the patent. 35 U.S.C. 321(c). This short-term window for filing a PGR reflects Congress's desire to create ''a new, early-stage process for challenging patent validity.'' H.R. Rep. No. 112–98, part 1, at 48. By setting forth a strict time limit with respect to the filing of PGRs, Congress sought to ensure review of patents ''early in their life, before they disrupt an entire industry or result in expensive litigation.'' 157 Cong. Rec. S1326 (daily ed. Mar. 7, 2011) (statement of Sen. Sessions). Congress also sought to incentivize the filing of PGRs by allowing petitioners to raise any ground related to invalidity under section 282(b) of the Patent Act, in contrast to IPRs, in which petitioners are permitted only to raise challenges on a ground that could be raised under section 102 or 103 and only on the basis of prior art consisting of patents or printed publications. 35 U.S.C. 311(b), 321(b). As a result, the statutory estoppel ensuing from a PGR proceeding is broader than the statutory estoppel from an IPR proceeding, lessening the risks of conflicting decisions arising between the PTAB and district courts. *See* 35 U.S.C. 315(e)(2), 325(e)(2). Additionally, the threshold standard for institution of a PGR is higher than that for an IPR, as it requires a showing that at least one claim is more likely than not unpatentable rather than merely a reasonable likelihood of prevailing. *Compare* 35 U.S.C. 324(a) *with* 35 U.S.C. 314(a).

Given the clear differences in their statutory requirements, which serve to reduce the likelihood of potentially conflicting outcomes in parallel PGR and district court litigation, the Office is exploring whether different criteria should apply to discretionary denial of PGRs versus IPRs. One possibility is a rule providing that the Board will not invoke its discretion to deny institution of a PGR based on parallel district court litigation. The Office welcomes thoughts on whether PGRs should be treated differently than IPRs and, if so, how.

(2) IPR or PGR Proceedings and Parallel ITC Investigations

Consistent with current USPTO practice, the Office is contemplating a rule providing that the Board will not invoke its discretion under 35 U.S.C. 314(a) or 324(a) to deny institution of an IPR or PGR based on the existence or status of parallel ITC proceedings.

The Office recognizes that important differences distinguish ITC investigations from patent invalidity trials in federal district courts. Unlike district courts, the ITC lacks authority to invalidate a patent, and its invalidity rulings are not binding on either the Office or a district court. *See Tandon Corp.* v. *U.S.I.T.C.,* 831 F.2d 1017, 1019 (Fed. Cir. 1987). Therefore, an ITC determination cannot conclusively resolve an assertion of patent invalidity, which instead requires either district court litigation or a PTAB proceeding to obtain claim cancellation. Thus, denying institution because of a parallel ITC investigation will not necessarily minimize potential conflicts between PTAB proceedings and district court litigation. For this reason, it is the current practice of the USPTO not to deny institution of an IPR or PGR petition based on parallel proceedings in the ITC.

Parallel Proceedings—Denial Available

If neither situation outlined above, if adopted, precludes discretionary denial, the Board would then proceed to consider discretionary denial of an IPR in view of a parallel district court action. The Office is considering two alternatives for applying the Director's discretion here: one in which discretionary denial determinations are governed solely by a clear, predictable rule, and another governed by that clear, predictable rule working, where appropriate, in conjunction with a streamlined version of the current *Fintiv* factors. In either option, a set of safe harbor exceptions to discretionary denial applies.

(1) Parallel IPR and District Court Proceedings—Clear, Predictable Rules

The Office notes that concerns regarding overlapping issues and duplicative efforts are greatly mitigated when a district court trial will not take place until after the Board issues a final written decision. Absent unusual circumstances, the Board is required to issue a final written decision not more than one year after an IPR is instituted. *See* 35 U.S.C. 316(a)(11). Thus, when a district court trial takes place more than one year after the deadline to institute an IPR, the estoppel of 35 U.S.C. 315(e)(2) will minimize or eliminate any potential overlap. *See id.* (providing that the issuance of a final written decision bars the petitioner from raising in district court ''any ground that the petitioner raised or reasonably could have raised during that inter partes review''). District courts, which are not bound by statutory deadlines, are also able to adjust case schedules or implement stays, and can thereby avoid expending significant pre-trial efforts on issues that will be resolved in an IPR.

The Office is considering that, unless a safe harbor exception in the following section is met, the Board would apply a clear, predictable rule and deny institution of an IPR in view of pending parallel district court litigation involving at least one of the challenged claims if the Board determines a trial in the district court action is likely to occur before the projected statutory deadline for a final written decision. When analyzing when a district court trial is likely to occur, the Board may consider evidence regarding the most recent statistics on median time-to-trial for civil actions in the district court in which the parallel litigation resides as well as additional supporting factors, such as the number of cases before the judge in the parallel litigation and the speed and availability of other case dispositions.

As an alternative to determining if a trial in the district court action is likely to occur before the projected statutory deadline for a final written decision, and to ensure more clarity and certainty, the Office is considering whether to adopt a rule providing that the Board will not invoke its discretion to deny an IPR petition based on a parallel district court proceeding if the IPR petition is filed within 6 months after the date on which the petitioner, a real party in interest, or a privy thereof is served with a complaint alleging infringement of the patent, provided that the petitioner, real party in interest, or privy did not first file a civil action seeking declaratory judgment of noninfringement of any claim of the patent before the date on which such complaint alleging infringement was filed. The Office recognizes that 35 U.S.C. 315(a)(1) bars institution of an IPR only if, before the date on which the petition for such review is filed, the petitioner or a real party in interest filed a civil action challenging the validity of a claim of the patent, and that 35 U.S.C. 315(b) permits a petition to be filed within one year of service of such a complaint. An early-filing exception would not, however, impose any earlier deadlines. It would instead merely offer an incentive for a petitioner to proceed promptly with any IPR petition. In the Office's experience, such an incentive is desirable because prompt filing of a petition minimizes the potential for overlapping issues and duplicative efforts that can result from parallel proceedings. For example, prompt filing of an IPR petition could permit a district court to consider the possibility of a stay before it has invested significant resources into a lawsuit or could allow the court to tailor its case management deadlines so that it can take advantage of Board decisions on any overlapping issues.

(2) Exceptions—Safe Harbors Under Consideration

The USPTO recognizes that there are certain situations in which it may be inappropriate for the Board to deny institution in view of parallel district court litigation and is considering adopting changes to the rules that would govern such situations.

First, the Office is considering a rule providing that the Board will not deny institution under 35 U.S.C. 314(a) in view of parallel litigation when the petitioner files a stipulation agreeing not to pursue potentially overlapping grounds in district court. The Office is considering whether the petitioner must show that a stipulation has been filed in the district court action as well, and whether, if the petitioner is not a party to the district court litigation but a district court litigant is nonetheless a real party in interest or in privity with the petitioner, a stipulation filed by the party to the district court action would suffice under this exception.

The Office has recognized that when a petitioner stipulates not to pursue in a parallel district court proceeding grounds that were raised in the petition, the stipulation mitigates concerns related to overlapping issues and duplicative efforts. *See Sand Revolution, II, LLC* v. *Cont'l Intermodal Grp.—Trucking LLC,* IPR2019–01393, 2020 WL 3273334, at *5 (PTAB June 16, 2020) (applying *Fintiv* factors and noting that the petitioner's stipulation to forgo pursing the ''same'' invalidity grounds in district court mitigated concerns regarding overlap) (*Sand Revolution* stipulation). The Office has also recognized that a broader stipulation, which also encompasses any ground that could have reasonably been raised in the petition, would weigh even more strongly against discretionary denial. *See Sotera Wireless, Inc.* v. *Masimo Corp.,* IPR2020–01019, 2020 WL 7049373, at *7 (PTAB Dec. 1, 2020) (applying *Fintiv* factors and determining that the petitioner's stipulation to forgo pursuing in district court litigation ''any ground raised or that could have been reasonably raised in an IPR'' weighed ''strongly'' against exercising discretion to deny an IPR) (*Sotera* stipulation). In accordance with the Guidance Memorandum, the Board's current practice is not to deny institution based on a parallel proceeding when the petitioner agrees to a broad *Sotera* stipulation that would prevent it from pursuing in a parallel district court proceeding ''the same grounds as in the petition or any grounds that could have reasonably been raised in the petition.''

A significant advantage of a *Sotera* stipulation is that it effectively minimizes concerns related to the overlapping issues and duplicative efforts that may result from parallel district court litigation. A *Sand Revolution* stipulation, in contrast, does not necessarily prevent a petitioner from using a reference that was not raised, but reasonably could have been raised in an IPR, as part of an invalidity argument in district court. The estoppel provision of 35 U.S.C. 315(e)(2) will bar the petitioner from pursuing in district court any ground it raised, or reasonably could have raised, in the IPR, but only upon the issuance of a final written decision. Because this estoppel provision does not apply until the end of an AIA trial, it does not eliminate the concerns about overlapping issues and duplicative efforts that could arise from allowing petitioners to avoid discretionary denial of institution by agreeing merely to a narrower *Sand Revolution* stipulation.

However, the USPTO also recognizes that there are several potential disadvantages of adopting a rule that requires *Sotera* stipulations. For example, after an IPR petition has been filed, a patent owner may amend its district court infringement contentions to accuse a petitioner of infringing additional claims. In this situation, a *Sotera* stipulation might unfairly limit the defenses a petitioner could raise in district court against the newly asserted claims. Accordingly, such a rule could

incentivize petitioners to challenge more claims than necessary in an IPR in order to protect themselves in parallel litigation, thereby increasing the Office's workload and the parties' corresponding burden and expense. The USPTO recognizes that a narrower stipulation, such as a *Sand Revolution* stipulation, might avoid these undesirable consequences. The Office further understands that district courts have tools available to manage overlapping issues and minimize duplicative efforts, including the ability to limit certain defenses, to grant stays, and to provide flexible schedules. These tools arguably mitigate the concerns regarding overlapping issues and duplicative efforts that would result from a rule that allowed a petitioner to avoid discretionary denial of institution by filing a narrower stipulation.

Based on the foregoing considerations, the USPTO currently believes that—should it maintain this exception—the most appropriate approach is to maintain the current practice of permitting a petitioner to avoid a discretionary denial only by filing a *Sotera* stipulation. The Office would appreciate public comments regarding whether other, narrower types of stipulations should be sufficient to permit a petitioner to avoid discretionary denial of institution, such as a *Sotera* stipulation that is limited to the specific patent claims challenged in the petition, or a *Sand Revolution* stipulation. The Office would also appreciate comments on whether the *Sotera* stipulation can and should be limited to the claims asserted at the time the stipulation is filed.

The Office is additionally considering removing this exception and instead making a *Sotera* stipulation a necessary but not sufficient basis for institution. In other words, to survive a challenge under *Fintiv,* the Petitioner would necessarily need to file a *Sotera* stipulation. The Petitioner would still need to meet the other criteria for institution in view of a parallel litigation as expressed in this section.

As an alternative to all of the options discussed above, in the interest of creating a bright line test and to reduce uncertainty, the Office seeks feedback on whether *Fintiv* should be replaced entirely by a *Sotera* stipulation requirement where, when a parallel litigation is ongoing, the Office will not exercise discretion to deny institution if a *Sotera* stipulation is filed but would otherwise discretionarily deny institution without consideration of other circumstances or factors discussed above.

Second, the USPTO recognizes that stays of district court proceedings can minimize concerns related to parallel litigation. The Office, therefore, is considering a rule providing that the Board will not invoke its discretion to deny institution of an IPR based on a parallel district court proceeding if the parallel proceeding has been stayed and is reasonably expected to remain stayed at least until the deadline for the Board's decision regarding whether to institute an IPR. Such a rule would be consistent with Board precedent holding that a stay of parallel district court litigation ''allays concerns about inefficiency and duplication of efforts'' and ''weighs strongly against exercising discretion to deny institution.'' *Snap, Inc.* v. *SRK Tech. LLC,* IPR2020–00820, Paper 15, 2020 WL 6164354, at *4 (PTAB Oct. 21, 2020) (precedential as to section II.A). Where a district court has stayed proceedings and the Board institutes an IPR, the district court can avoid overlapping issues by continuing the stay until the Board issues a final written decision, at which time the petitioner will be barred from asserting in district court ''any ground that the petitioner raised or reasonably could have raised during that inter partes review.'' 35 U.S.C. 315(e)(2). Alternatively, the district court can adopt a schedule that allows it to avoid unnecessary rulings on potentially overlapping issues and to take advantage of Board rulings while still permitting litigation to move forward.

The USPTO is considering other exceptions as well. One potential exception in relation to parallel IPR or PGR and district court proceedings relates to strength of merits. In particular, the Office is contemplating that if the circumstances favor a discretionary denial of institution, the Board will analyze the merits of the petition, and will not discretionarily deny institution if the petition presents compelling merits. To further aid the USPTO's consideration of this proposal, the Office requests comments on whether a finding by the Board that the petition meets the compelling merits standard at institution increases or decreases the chance that a parallel district court action will be stayed.

(3) Parallel IPR and District Court Proceedings—Additional Factor-Based Test

The clear, predictable rule proposed above to govern discretionary denial decisions based on parallel district court proceedings is intended to provide clarity and certainty for the parties. Recognizing that the discretionary issues presented by parallel district court litigation can be highly fact-variant, the Office is considering whether to additionally provide for a streamlined version of one or more of the other current *Fintiv* factors. The factor-based test would be available to the parties and the Board to consider, as appropriate and necessary, to avoid effecting an unduly harsh outcome under the clear, predictable rule. The Office expects that the clear, predictable rule will control the vast majority of discretionary issues in this space and make it unnecessary to engage any factor-based test.

For example, the Office is contemplating a factor-based test that would omit *Fintiv* factor 1 (the likelihood of a stay) because past experience has shown it to be difficult to predict a district court's future actions. The Office is also contemplating omitting *Fintiv* factor 5 (whether the petitioner and the defendant in the parallel proceeding are the same party) in favor of considering real parties in interest and privies, or alternatively parties that are substantially related.

The Office is considering three non-exclusive factors that, in addition to a clear, predictable rule, would be available, where appropriate, to guide the Board's discretion in situations in which the petitioner, its real party in interest, or a privy thereof is a party to ongoing district court litigation. The factors under consideration are:

(1) Past and future expected investment in the parallel proceeding by the district court and the parties;

(2) The degree of overlap between the issues in the petition and the parallel district court proceeding; and

(3) Any other circumstances that the parties contend are relevant to the Board's exercise of discretion.

The first two factors are similar to *Fintiv* factors 3 and 4, respectively. The third factor above is similar to *Fintiv* factor 6. The exceptions/safe harbors from discretionary denial discussed above would apply equally to any discretionary decision rendered by the Board based on a factor-based test.

The Office welcomes thoughts on (1)–(3) above including the Office's current application of (3). The Office also welcomes comments on whether (1) or (2) are necessary.

Under the current guidelines, the PTAB weighs under the *Fintiv* analysis any additional circumstances that inform whether institution would advance or negatively impact the integrity of the patent system, including whether there is an abuse of the process such that the AIA proceeding is being used in a way that does not comport

with the purpose and legitimate goals of the AIA. *See OpenSky Indus., LLC* v. *VLSI Tech. LLC,* IPR2021–01064, Paper 102 at 44 (PTAB Oct. 4, 2022) (Director decision, precedential). A party may raise under *Fintiv* as an additional circumstance for denying a petition sought to be joined the fact that the party seeking to join would have been time-barred from filing the petition it seeks to join. Currently, any decision by the PTAB granting or denying institution based on this paragraph may be challenged on Director review.

The Office is also considering adopting a rule with regard to petitions accompanied by a motion for joinder. To help clarify the application of discretionary denial in view of a co-pending district court litigation, the joinder petition would be evaluated with respect to the timing of any underlying litigation of the earlier-filed petition. This means that when a party seeks to join an AIA proceeding, the PTAB would conduct the parallel proceeding analysis with respect to litigation involving the petitioner for the first-filed petition to which joinder is sought, in addition to exercising the Director's discretion on joinder consistent with operable rules, precedent, and practices.

Stipulation on No Multiple Challenges

To avoid patent owner harassment, the Office is considering, as a condition to not discretionarily denying institution under 35 U.S.C. 314(a), requiring petitioners to file a stipulation that neither they nor their privy or real parties have filed prior post-grant proceedings (PGRs, IPRs, CBMs or ex parte reexaminations requested by third parties, not by patent owner) as to any of the challenged claims; and that if their post-grant proceeding is instituted, neither they nor their privy or real parties in interest, will challenge any of the challenged claims in a subsequent post-grant proceeding (including PGRs, IPRs and ex parte reexaminations requested by third parties, not by patent owner). The Office is considering an exception to this rule where a petitioner can establish exceptional circumstances. Exceptional circumstances may include, for example, situations in which a patentee broadens the scope of the claims through a proposed claim construction.

Separate Briefing for Discretionary Denial

Many commenters who responded to the RFC suggested allowing the parties to brief discretionary denial considerations under 35 U.S.C. 314(a), 324(a), and 325(d) in separate papers (*i.e.,* separate from the petition or the patent owner preliminary response), to avoid encroaching on the parties' word-count limits for briefing on the merits. The Office has found the practice of allowing parties to file separate papers addressing the ranking of petitions helpful in evaluating parallel petitions while preserving the parties' word count to focus on the merits of the challenge. The Office believes a similar procedure to allow parties to address all relevant factors for discretionary denial in separate briefing would also be helpful.

The USPTO is considering amending the rules to provide a procedure for separate briefing on discretionary denial, in which the patent owner would file, prior to the deadline for a preliminary response, a separate request for discretionary denial to address any relevant factors regarding discretionary denial. This filing would trigger the opportunity for the petitioner to file an opposition and for the patent owner to file a reply. The page limits for such briefing would be 10 pages for the patent owner request, 10 pages for a petitioner opposition to the request, and 5 pages for a patent owner reply.

The Office is further considering amending the rules to provide that the Board may also, in the interest of justice, raise discretionary denial *sua sponte,* in which case the Board will provide the parties with the opportunity for briefing.

The USPTO also requests feedback on whether the Office should require patentees to provide (*e.g.,* in a request for discretionary denial or as part of their mandatory disclosures, 37 CFR 42.8) additional information as to patent ownership as a precondition for the Board considering discretionary denial. For example, the Office requests feedback on whether, as a precondition to discretionary denial, patent owners should be required to disclose additional information relating to entities having a substantial relationship with the patent owner (*e.g.,* anyone with an ownership interest in the patent owner; any government funding or third-party litigation funding support, including funding for some or all of the patent owner's attorney fees or expenses before the PTAB or district court; and any stake any party has in the outcome of the AIA proceeding or any parallel proceedings on the challenged claims).

Settlement Agreements

For consistency and predictability, the USPTO is considering changes to the rules to clarify that parties must file with the Office true copies of all settlement agreements, including pre-institution settlement agreements (or understandings between the parties, including any collateral agreements referred to in such agreements or understandings), similar to post-institution settlement agreements. In addition, although the USPTO may grant a motion to terminate an AIA proceeding prior to or after institution based on a binding term sheet, the Office proposes to clarify that parties are required to file a true copy of any subsequent settlement agreements between the parties in connection with, or in contemplation of, the termination.

These considered changes align with the policy set forth in the Executive Order on Promoting Competition in the American Economy (E.O. 14036), which encourages Government agencies to cooperate on policing unfair, anticompetitive practices. Having a depository of all settlement agreements in connection with contested cases, including AIA proceedings, in the USPTO would assist the Federal Trade Commission (FTC) and the Department of Justice in determining whether antitrust laws were being violated. *See, e.g.,* Congressional Record, Senate, October 3, 1962, 22041, *www.govinfo.gov/content/pkg/GPO-CRECB-1962-pt16/pdf/GPO-CRECB-1962-pt16-5.pdf* (explaining that the filing with the Patent Office of all agreements in connection with interference cases would assist the FTC and the Department of Justice in determining whether the antitrust laws were being violated).

Although 35 U.S.C. 135(e), 317(b), and 327(b) require filing of settlement agreements made in connection with, or in contemplation of, the termination of a proceeding that has been instituted, these statutory provisions do not expressly govern AIA pre-institution settlement. *See* Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612, 48625 (Aug. 14, 2012) (final rule) (stating that ''35 U.S.C. 135(e) and 317, as amended, and 35 U.S.C. 327 will govern settlement of Board trial proceedings but do not expressly govern pre-institution settlement''). The Office is considering changes to clarify that 37 CFR 42.74(b) ''provides that settlement agreements must be in writing and filed with the Board prior to termination of the proceeding.''

Since the inception of AIA trials, the Board has been generally uniform in requiring the filing of a settlement agreement prior to terminating an AIA proceeding based on a joint motion by the parties, pre- or post-institution. Nevertheless, some petitioners have

recently filed motions to dismiss or withdraw the petition before institution, arguing that they should not be required to file a copy of the parties' settlement agreements, and some panels in those cases have granted the motions and terminated the proceedings without requiring the parties to file their settlement agreements. *See, e.g., Samsung Elecs. Co.* v. *Telefonaktiebolaget LM Ericsson,* IPR2021–00446, Paper 7 (PTAB Aug. 3, 2021) (Order—Dismissal Prior to Institution of Trial) (over the dissent of one Administrative Patent Judge (APJ), granting the petitioner's motion to dismiss the petition and terminating the proceeding, without requiring the parties to file their settlement agreements); *Huawei Techs. Co.* v. *Verizon Patent & Licensing Inc.,* IPR2021–00616,–00617, Paper 9 (PTAB Sept. 9, 2021) (Order—Dismissal Prior to Institution of Trial) (same dispute among a panel of APJs); *AEP Generation Res. Inc.* v. *Midwest Energy Emissions Corp.,* IPR2020–01294, Paper 11 (PTAB Dec. 14, 2020).

For consistency and predictability, the considered changes would ensure that pre-institution settlement agreements, like post-institution settlement agreements, are filed with the Board. Under the considered changes, notwithstanding that an AIA proceeding is in a preliminary stage before institution, any agreement or understanding between the patent owner and a petitioner, including any collateral agreements referred to in such agreement or understanding, made in connection with, or in contemplation of, the termination of an AIA proceeding, would be required to be in writing, and a true copy of such agreement or understanding would be required to be filed in the Office. In short, all settlement agreements between the parties made in connection with, or in contemplation of, the termination of an AIA proceeding would need to be in writing and filed with the Board. Parties would not be able to circumvent this requirement by filing merely a motion to dismiss or withdraw the petition, as granting such a motion would effectively terminate the proceeding.

In addition, as noted above, although the USPTO may grant a motion to terminate an AIA proceeding prior to or after institution based on a binding term sheet, the Office could require the filing of a true copy of any subsequent settlement agreement between the parties in connection with, or in contemplation of, the termination. Under the current practice, some panels have accepted a binding term sheet as the settlement agreement, while other panels have required a formal settlement agreement, not just a binding term sheet. For example, in several cases, panels granted a motion to terminate a proceeding based on a binding term sheet notwithstanding that a future settlement agreement was contemplated. *See, e.g., Allergan Inc.* v. *BTL Healthcare Techs. A.S.,* PGR2021–00022, Paper 17 (PTAB July 6, 2021); *Nalu Med., Inc.* v. *Nevro Corp.,* IPR2021–01023, Paper 14 (PTAB Nov. 24, 2021). In several other cases in which the parties filed or executed a binding term sheet while contemplating a settlement agreement, the panel held the motion to terminate in abeyance until the parties filed the settlement agreement, or granted a short extension of time, so the parties could avoid the expense of continued preparation of a preliminary response or other papers until the parties filed the settlement agreement. *See, e.g., Textron Inc.* v. *Nivel Parts & Mfg. Co.,* PGR2017–00035, Paper 15 (PTAB Feb. 2, 2018); *AT&T Corp.* v. *Kaifi LLC,* IPR2020–00889, Paper 9 (PTAB July 17, 2020).

The Office is considering changes to amend the rules to provide that the parties may file a binding term sheet with their motion to terminate a proceeding. Also, the Board may grant the motion to terminate based on the binding term sheet if the parties certify in their motion that: (1) there are no other agreements or understandings, including any collateral agreements, between the parties with respect to the termination of the proceeding; and (2) they will file a true copy of any subsequent settlement agreement between the parties, including collateral agreements, made in connection with the termination of the proceeding, within one month from the date that the settlement agreement is executed. A failure to timely file the subsequent settlement agreement could result in sanctions. *See* 37 CFR 42.11(a) and 42.12. The Board may maintain jurisdiction over the proceeding and the involved patent to resolve any misconduct issues or vacate its decision granting the motion to terminate.

The Office welcomes any comments on the anticipated benefits and costs to individual parties, and the economy as a whole, that may result from the proposed actions above on discretionary denial.

The Office welcomes any other additional comments or proposals on discretionary denial.

Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of E.O. 12866 (Sept. 30, 1993).

Katherine K. Vidal,

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

[FR Doc. 2023–08239 Filed 4–20–23; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0307; FRL–10892–01–R6]

Air Plan Approval; Texas; Updates to Public Notice and Procedural Rules and Removal of Obsolete Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve portions of three revisions to the Texas State Implementation Plan (SIP) submitted by the Texas Commission on Environmental Quality (TCEQ) on July 9, 2021, and January 21, 2022. The first revision, adopted on April 22, 2020, submitted on January 21, 2022, updates internal cross-references and removes or replaces obsolete provisions identified during a routine review of the Texas permitting regulations. The second revision, adopted on June 9, 2021, submitted July 9, 2021, repeals obsolete permitting provisions, and makes necessary corresponding edits to other permitting provisions. The third revision, adopted on August 25, 2021, submitted January 21, 2022, enhances the public notice requirements of the air permitting program.

DATES: Written comments must be received on or before May 22, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2022–0307, at *https://www.regulations.gov* or via email to *wiley.adina@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information 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 Adina Wiley, 214–665–2115, *wiley.adina@epa.gov.* 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.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permits Section, 214–665–2115, *wiley.adina@epa.gov.* We encourage the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. Background

Section 110 of the Act requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA's National Ambient Air Quality Standards (NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The state's air regulations are contained in its SIP, which is basically a clean air plan. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to the EPA for approval, and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

Section 110(a)(2)(C) of the CAA requires states to develop and submit to the EPA for approval into the SIP, preconstruction review and permitting programs applicable to certain new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the New Source Review (NSR) SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and Minor NSR. The EPA codified minimum requirements for these State permitting programs including public participation and notification requirements at 40 CFR 51.160 through 51.164. Requirements specific to construction of new stationary sources and major modifications in nonattainment areas are codified in 40 CFR 51.165 for the NNSR program. Requirements for permitting of new stationary sources and major modifications in attainment areas subject to PSD, including additional public participation requirements, are found at 40 CFR 51.166.

On July 9, 2021, the TCEQ submitted revisions to the Texas SIP that repealed obsolete provisions from the Texas permitting program and made other necessary updates to the permitting regulations to remove cross-references to the repealed provisions and renumbered existing provisions accordingly. The July 9, 2021, submittal also included updates to the Texas Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting programs to allow for project emissions accounting (PEA). The EPA is addressing the PSD and NNSR specific revisions to allow for PEA in a separate rulemaking.

On January 21, 2022, Mr. Jon Nierman, Chairman of the TCEQ, submitted two revisions to the Texas SIP. The first revision was a suite of regulatory amendments that were adopted on April 22, 2020, to update cross-references and remove or replace obsolete provisions identified during a routine review of the Texas permitting program regulations. The second revision included amendments adopted on August 25, 2021, to expand the public notice requirements for the air permitting program.

II. The EPA's Evaluation

The accompanying Technical Support Document for this action includes a detailed analysis of the submitted revisions to the Texas SIP which are the subject of this proposed rulemaking. Our analysis indicates that the July 9, 2021, and two January 21, 2022, SIP revisions addressed in this proposed rulemaking action were developed in accordance with the CAA and the State provided reasonable notice and public hearing.

A. Evaluation of the Repeal of Obsolete Permitting Provisions

On June 9, 2021, the TCEQ adopted the repeal of the entirety of 30 TAC Chapter 116, Subchapter H, Permits for Grandfathered Facilities. On July 9, 2021, The TCEQ submitted the repeal of 30 TAC Sections 116.770–116.772, 116.774–116.775, 116.777–116.781, 116.783, 116.785, 116.788, and 116.790 to the EPA. The TCEQ administrative record demonstrates that these provisions are no longer needed in Texas and that any facilities that were covered by the previous rule have either submitted an appropriate permit authorization or submitted a notification of shutdown thereby negating the need for the grandfathered facilities provisions. Therefore, any previously grandfathered facilities subject to 30 TAC Chapter 116, Subchapter H are covered under other SIP-approved provisions.

The repeal of 30 TAC Chapter 116, Subchapter H, necessitated additional cleanup within the Texas permitting regulations to remove cross-references to the obsolete and repealed provisions. These revisions are identified in our accompanying Technical Support Document (TSD) and summarized below.

- 30 TAC Section 116.910(e) was deleted because the requirements in 30 TAC Chapter 116, Subchapter H were removed. Former provisions at 30 TAC Section 116.910(f) were renumbered to 30 TAC Section 116.910(e).
- Provisions in 30 TAC Section 116.911(g) were deleted because the underlying provisions in 30 TAC Chapter 116, Subchapter H were deemed obsolete and repealed.
- Provisions in 30 TAC Section 116.920(b) were deleted because the underlying provision in 30 TAC Chapter 116, Subchapter H were deemed obsolete and repealed. The remaining provisions in 116.920 were renumbered accordingly but not otherwise substantively revised.
- Provisions at 30 TAC Section 116.1530(b) removed a reference to 30 TAC Chapter 116, Subchapter H.

The EPA supports the repeal of and deletion from the Texas SIP for the above identified provisions. We also support the non-substantive, minor grammatical changes that the TCEQ submitted at 30 TAC Chapter 116, Sections 16.911(b), 116.911(e), renumbered 116.920(c) to address formatting of subscripts and acronym.

B. Evaluation of the Procedural Rule Updates

On January 21, 2022, the TCEQ submitted revisions to the Texas SIP

adopted on April 22, 2020, at 30 TAC Chapters 39, 55, 101, and 116. These amendments were identified during a routine review of the Texas regulations. The amendments remove obsolete date references, update internal cross-references, and correct grammar and punctuation. The submitted revisions to 30 TAC Sections 39.405, 39.411, 39.419. 39.420, 39.601, 39.603, 55.154, 55.156, 101.306, 116.111 and 116.112 are identified in our accompanying TSD. These revisions are approvable and necessary for the functionality of the Texas SIP.

C. Evaluation of the Public Notice Revisions

On January 21, 2022, the TCEQ submitted revisions to the Texas SIP adopted on August 25, 2021, to enhance existing public notice requirements for air permitting. The TCEQ adopted new requirements at 30 TAC Section 39.405(k) to require a plain-language summary of the application for all applications declared administratively complete on or after May 1, 2022. The applicant is required to provide a plain-language summary of the application that will describe the function of the proposed plant or facility, expected output, expected pollutants, and how the applicant will control the pollutants to show the proposed plant will not have an adverse impact on human health or the environment. The requirement for a plain-language summary for all applications will promote transparency in the air permitting process.

New 30 TAC Section 39.426 was established for alternative language requirements. This new section incorporates and expands upon the previous SIP-approved requirements that were moved from 30 TAC Section 39.405(h). This move necessitated several updates to numbering and cross-references throughout the TAC. These structural updates are approvable. The applicability of new 30 TAC Section 39.426 is established at 30 TAC Section 39.426(a) and is consistent with the previous SIP-approved applicability requirements under 30 TAC Section 39.405(h). The expansion of the alternative language requirements is reviewed in detail in the accompanying TSD and summarized below.

- New 30 TAC Section 39.426(b)(5) requires the TCEQ Office of Chief Clerk to publish the alternative language notice on the TCEQ website if there is not a publication available in the alternative language or if the publisher of the alternative language publication refuses to publish the notice. The English language notice must also include information about how to access the alternative language notice.
- New 30 TAC Section 39.426(c) requires the plain language summary of the application must be provided in the alternative language and will be posted on the TCEQ website.
- Under New 30 TAC Section 39.426(d), if alternative language notice is required, notifications of any public meetings must be provided in the alternative language. The applicant must also provide interpretative services in the alternative language if comments were received in the alternative language or there is substantial or significant public interest in translation services.
- New 30 TAC Section 39.426(e) provides the criteria to determine when the response to comments required under 30 TAC Section 55.156(b) must be provided in the alternative language.
- New 30 TAC Section 39.426(f) extends the alternative language requirements to requests for reconsideration or rehearing requests in some circumstances.
- New 30 TAC Section 39.426(g) establishes the procedures used for correcting alternative language translation errors.

III. Proposed Action

Pursuant to section 110 of the Act, we are proposing to approve the submitted revisions to the Texas SIP that update the air permitting program by removing obsolete provisions and enhancing public notice by extending requirements for alternative language notices to notices for public meetings in certain circumstances. Our analysis found that the submitted revisions are consistent with the CAA and the EPA's regulations, policy, and guidance for permitting SIP requirements.

The EPA is proposing approval of the following revisions adopted on June 9, 2021, effective on July 1, 2021, submitted to the EPA on July 9, 2021:

- Revisions to 30 TAC Section 116.910—Applicability,
- Revisions to 30 TAC Section 116.911—Electric Generating Facility Permit Application,
- Revisions to 30 TAC Sections 116.920—Public Participation for Initial Issuance,
- Revisions to 30 TAC Sections 116.1530—Best Available Retrofit Technology (BART) Control Implementation, and
- Repeal of 30 TAC Sections 116.770–116.772, 116.774, 116.775, 116.777–116.781, 116.783, 116.785–116.788, and 116.790.

The EPA is proposing approval of the following revisions adopted on April 22, 2020, effective on May 14, 2020, submitted to the EPA on January 21, 2022:

- Revisions to 30 TAC Section 39.405,
- Revisions to 30 TAC Section 39.411,
- Revisions to 30 TAC Section 39.419,
- Revisions to 30 TAC Section 39.420,
- Revisions to 30 TAC Section 39.601,
- Revisions to 30 TAC Section 39.603,
- Revisions to 30 TAC Section 55.154,
- Revisions to 30 TAC Section 55.156,
- Revisions to 30 TAC Section 101.306,
- Revisions to 30 TAC Section 116.111, and
- Revisions to 30 TAC Section 116.112.

The EPA is also proposing approval of the following revisions adopted on August 25, 2021, effective September 16, 2021, submitted to the EPA on January 21, 2022:

- Revisions to 30 TAC Section 39.405,
- Revisions to 30 TAC Section 39.412,
- Revisions to 30 TAC Section 39.418,
- Revisions to 30 TAC Section 39.419,
- New 30 TAC Section 39.426,
- Revisions to 30 TAC Section 39.602,
- Revisions to 30 TAC Section 39.604,
- Revisions to 30 TAC Sections 55.154, and
- Revisions to 30 TAC Sections 55.156.

IV. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within Texas.[1] The EPA then compared the data to the national average for each of the demographic groups. The results of this analysis are being provided for informational and transparency purposes. The results of the demographic analysis indicate that, for populations within Texas, the percent people of color (persons who reported their race as a category other than White

[1] See the United States Census Bureau's QuickFacts on Texas at *https://www.census.gov/quickfacts/fact/table/TX,US/PST045221*. This information is also available in the rulemaking docket.

alone (not Hispanic or Latino)) is less than the national average (40.3 percent versus 59.3 percent). Within people of color, the percent of the population that is Black or African American alone is lower than the national average (13.2 percent versus 13.4 percent) and the percent of the population that is American Indian/Alaska Native is lower than the national average (1.1 percent versus 1.3 percent). The percent of the population that is Hispanic or Latino is significantly higher than the national average (40.2 percent versus 18.9 percent). The percent of the population that is Two or More races is lower than the national averages (2.2 percent versus 2.9 percent). The percent of persons in poverty in Texas is higher than the national average (14.2 percent versus 11.6 percent). The percent of persons aged 25 years and older with a high school diploma in Texas is slightly lower than the national average (84.4 percent versus 88.5 percent), and the percent with a Bachelor's degree or higher is below the national average (30.7 percent versus 32.9 percent).

This action proposes to approve portions of three revisions to the Texas SIP submitted on July 9, 2021, and January 21, 2022. Final approval of these revisions to the Texas SIP will continue to enable the State of Texas to implement control strategies and permitting programs by removing obsolete provisions and enhancing public notice. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in Section III of this preamble, Proposed Action. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of 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; and

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. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The state air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as 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. 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 inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 17, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–08437 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2023–0195, FRL–10612–03–R10]

Air Plan Approval; Idaho: Inspection and Maintenance Program Removal; Extension of Comment Period; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period and correction.

SUMMARY: On March 30, 2023, the Environmental Protection Agency (EPA) proposed to approve revisions to the Idaho State Implementation Plan (SIP) submitted by the State of Idaho (Idaho or the State) on December 29, 2022. The proposed revision, applicable in the Boise-Northern Ada County Carbon Monoxide area (Northern Ada County CO area) in Idaho, removes the Inspection and Maintenance (I/M) program. In that publication, we supplied an incorrect docket number for commenters to use when sending comments. The correct docket number is EPA–R10–OAR–2023–0195. The EPA is also announcing the extension of the comment period for the proposed rulemaking.

DATES: The public comment period for the proposal published in the **Federal Register** on March 30, 2023 (88 FR 19030) is extended from May 1, 2023 to May 22, 2023. Written comments must be received on or before May 22, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2023–0195, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, EPA Region 10 at (206) 553–6121, or *vaupel.claudia@epa.gov*.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 30, 2023 (88 FR 19030), in FR Doc. 2023–06461, on page 19030, the following corrections are made:

1. On page 19030, in the first column, under the document heading, remove EPA's Docket ID No. ''EPA–R10–OAR–2023–0012'' and replace it with ''EPA–R10–OAR–2023–0195''; and

2. On page 19030, in the second column, in the **ADDRESSES** section, line 2, remove EPA's Docket ID No. ''EPA–R10–OAR–2023–0012'' and replace it with ''EPA–R10–OAR–2023–0195''.

Dated: April 18, 2023.

Casey Sixkiller,

Regional Administrator, Region 10.

[FR Doc. 2023–08505 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2022–0309; FRL–10903–01–R6]

Air Plan Disapproval; Texas; Contingency Measures for the Dallas-Fort Worth and Houston-Galveston-Brazoria Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to disapprove revisions to the Texas State Implementation Plan (SIP) for the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) serious ozone nonattainment areas for the 2008 ozone National Ambient Air Quality Standard (NAAQS). Specifically, EPA is proposing to disapprove the portion of these SIP revisions that the state intended to address contingency measure requirements. Contingency measures are control requirements in a nonattainment area SIP that would take effect should the area fail to meet Reasonable Further Progress (RFP) emissions reductions requirements or fail to attain the NAAQS by the applicable attainment date.

DATES: Written comments on this proposal must be received on or before May 22, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2022–0309, at *https://www.regulations.gov* or via email to *riley.jeffrey@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information 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 Jeff Riley, 214–665–8542, *riley.jeffrey@epa.gov.* 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.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Jeff Riley, EPA Region 6 Office, Infrastructure & Ozone Section, 214–665–8542, *riley.jeffrey@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. The EPA Region 6 office encourages the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

On May 13, 2020, the Texas Commission on Environmental Quality (TCEQ or State) submitted to EPA SIP

revisions addressing requirements for the 2008 8-hour ozone NAAQS for the two Serious ozone nonattainment areas in Texas—the DFW and HGB areas. As Serious ozone nonattainment areas, the DFW Area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise counties) and the HGB Area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties) were both subject to the CAA section 182 Serious ozone nonattainment area requirements, one of which was that the state must adopt and submit contingency measures for implementation should the area fail to meet RFP emissions reductions or fail to attain the 2008 ozone NAAQS by the applicable attainment date.[1] The May 13, 2020, SIP revision submissions also included such provisions intended to satisfy the contingency measures requirement for both the DFW and HGB areas.

On September 29, 2020 (85 FR 60928), we published a proposed rule to approve those portions of the May 13, 2020, Texas SIP revision addressing the HGB RFP requirements and the contingency measures requirement. On October 9, 2020 (85 FR 64084), we published a proposed rule to approve those portions of the May 13, 2020, Texas SIP revision addressing the DFW RFP requirements and the contingency measures requirement. In this proposal, we refer to the RFP element of the May 13, 2020, Texas SIP revisions as ''the RFP demonstration,'' and to the contingency measures element of the May 13, 2020, Texas SIP revisions as ''the contingency measures.'' We also refer to our September 29, 2020, proposed action and Technical Support Document (TSD) as ''the HGB proposal,'' and to the October 9, 2020, proposed action and TSD as ''the DFW proposal.'' [2]

In our DFW and HGB proposals, we provided information on ozone formation, the ozone standards, area designations, related ozone nonattainment plan requirements under the CAA, and the EPA's implementing regulations for the 2008 ozone standards, referred to as the 2008 Ozone SIP Requirements Rule (''2008 Ozone SRR'').[3] EPA received no comments on the HGB proposal by the October 29, 2020 close of the public comment period. EPA did receive adverse comments on the DFW proposal by the November 9, 2020 close of the public comment period.[4]

Among other issues, the commenters on the DFW proposal asserted that our proposed approval of the DFW area contingency measures would be inconsistent with a September 12, 2016 decision issued by the U.S. Court of Appeals for the Ninth Circuit (''Ninth Circuit'') in a case referred to as *Bahr* v. *EPA.* In *Bahr,* the Ninth Circuit concluded that contingency measures must be measures that would only take effect at the time the area fails to meet RFP or to attain by the applicable attainment date, not before.[5] After the *Bahr* decision, EPA recognized that within the geographic jurisdiction of the Ninth Circuit (which does not include Texas), the language of CAA sections 172(c)(9) and 182(c)(9) require contingency measures to be both prospective (*i.e.,* that they be undertaken in the future), and conditional (*i.e.,* that implementation is conditional upon the area's failure to meet RFP or to attain by the applicable attainment date).[6]

On January 29, 2021, the U.S. Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') issued a decision in response to challenges to EPA's rule implementing the 2015 ozone NAAQS, (83 FR 62998 (December 6, 2018)). *Sierra Club, et al.* v. *EPA,* 985 F.3d 1055 (D.C. Cir. 2021). Among the rulings in this decision, the D.C. Circuit endorsed the holding of *Bahr* and vacated EPA's interpretation of the CAA that allowed states to rely on already-implemented control measures to meet the statutory requirements of section 172(c)(9) or 182(c)(9) for contingency measures in nonattainment plans for the ozone NAAQS (see 83 FR 62998, 63026–27). The effect of this decision is that the CAA interpretation that contingency measures must be prospective and conditional applies across the U.S.[7] EPA notes that the court issued the *Sierra Club* decision after the close of the comment period on both of the prior HGB and DFW proposals concerning contingency measures required by sections 172(c)(9) and 182(c)(9).

On May 10, 2021 (86 FR 24717), EPA finalized its approval of the HGB area RFP demonstration and associated motor vehicle emissions budgets (MVEBs), and a revised 2011 base year emissions inventory. In that final rulemaking, we did not take final action on our October 29, 2020 proposed approval of the contingency measures submitted as part of the State's May 13, 2020, SIP revision submission for the HGB area. EPA explained that it was reexamining the contingency measures element of the TCEQ submission for the HGB area in light of the D.C. Circuit decision, and that it would address those contingency measures in a separate future action. Similarly, we are proposing to take action here on the DFW contingency measures and we will address the DFW RFP demonstration in a separate action.

II. The EPA's Evaluation

1. Statutory and Regulatory Requirements

Under the CAA, states with ozone nonattainment areas classified under subpart 2 as Moderate or above must adopt and submit nonattainment plans that include contingency measures consistent with section 172(c)(9). Similarly, states with ozone nonattainment areas classified as Serious or above must include contingency measures consistent with section 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event the area fails to meet RFP or to attain the NAAQS by the applicable attainment date. The SIP submission should identify such controls or measures, specify a schedule for implementation, and indicate that the measures will be implemented without significant further action by the state or the EPA.[8]

As of the dates of our September 2020 and October 2020 proposals to approve the HGB and DFW contingency measures submitted as part of the State's May 13, 2020, SIP revision submissions, it had been the EPA's long-standing interpretation of section 172(c)(9) that states could rely on emission reductions from already-implemented measures to meet the contingency measures requirements. Thus, states could rely on

[1] Note EPA's recent final determination that the HGB and DFW Serious nonattainment areas failed to attain the 2008 ozone NAAQS by the areas' attainment date. 87 FR 60926 (October 7, 2022).

[2] The May 13, 2020, SIP submissions, our September 2020 proposal, and our October 2020 proposal are provided in the docket for this action.

[3] See 80 FR 12264 (March 6, 2015).

[4] Comments received on this action from Air Law for All on behalf of the Center for Biological Diversity and the Sierra Club are provided in the docket at *https://www.regulations.gov* under docket ID: EPA–R06–OAR–2020–0161.

[5] *Bahr* v. *EPA,* 836 F.3d 1218, at 1235–1237 (9th Cir. 2016).

[6] The *Bahr* v. *EPA* decision involved a challenge to an EPA approval of contingency measures under the general nonattainment area plan provisions for contingency measures in CAA section 172(c)(9), but, given the similarity between the statutory language in section 172(c)(9) and the additional ozone-specific contingency measure provision in section 182(c)(9), EPA found that the decision affected how it should interpret both sections of the Act in the Ninth Circuit.

[7] Contingency measures that are to take effect upon failure to satisfy standards are likewise not measures that have been implemented before such failure occurs. *Sierra Club, et al.* v. *EPA,* 985 F.3d 1055, 1067–68 (D.C. Cir. 2021).

[8] See 70 FR 71612 (November 29, 2005). See also 80 FR 12264, 12285 (March 6, 2015).

emissions reductions from existing federal measures (*e.g.,* federal mobile source measures based on the incremental turnover of the motor vehicle fleet each year) or emission reductions from already-implemented state or local measures in the SIP, or the excess emissions reductions from already-implemented measures that provide emissions reductions in excess of those needed to meet any other nonattainment plan requirements, such as meeting Reasonably Available Control Measure (RACM)/Reasonably Available Control Technology (RACT), RFP, or modeled attainment demonstration requirements.

The EPA has previously approved nonattainment area plan submissions under the now invalidated interpretation that already-implemented measures were permissible as contingency measures, *i.e.,* contingency measures that consisted of one or more federal or state control measures that are already in place and provide reductions that are in excess of the reductions needed to meet other requirements or relied upon in the modeled attainment demonstration.[9] However, after *Bahr,* and especially after *Sierra Club,* EPA can no longer interpret the CAA to allow approval of already-implemented measures as meeting the contingency measures requirements of CAA sections 172(c)(9) or 182(c)(9). Contingency measures must be prospective and conditional, *i.e.,* measures that would take effect in the event the area fails to make RFP or attain by the applicable attainment date, not before.

2. Summary of the State's Submission

For both the DFW and HGB 2008 ozone NAAQS Serious nonattainment areas, the contingency measures the state submitted as part of the May 13, 2020, SIP revision submissions consist of surplus emissions reductions from already-implemented control measures. The state relied on the excess emissions from such already-implemented measures to demonstrate compliance with the contingency measure requirements of CAA sections 172(c)(9) and 182(c)(9).[10] The State determined the emissions reductions from these measures to be surplus, in that the state did not rely upon them in the nonattainment plan for demonstrating RFP or attainment. The May 13, 2020, SIP submissions explained that these surplus emission reductions will continue to take place during calendar year 2021, and thus the state identified them as contingency measures for the DFW and HGB areas. These measures consist of projected emission reductions from federal vehicle and engine emissions certification programs and from fuel control programs for both on-road and non-road vehicles (see Table 1) which were already adopted by EPA and the implementation of which does not depend on whether a nonattainment area attains or meets its reasonable further progress requirements. The State claimed that the projected combined VOC and NO_X emissions reductions of 3 percent for the DFW area and NO_X emissions reductions of 3 percent for the HGB area to be achieved between January 1, 2021 through December 31, 2021 (from the 2011 baseline) satisfies the CAA requirements for contingency measures.[11]

TABLE 1—DFW & HGB AREA CONTROL MEASURES IDENTIFIED FOR CONTINGENCY EMISSION REDUCTIONS, JANUARY 1, 2021–DECEMBER 31, 2021

Control strategy description	Year control program started	Additional information
DFW Area I/M Program[12]	1990	1990—Dallas, Tarrant Counties only. 2002—I/M & Anti-Tampering Program (ATP) expanded to Collin, Denton Counties. 2003—I/M & ATP expanded to Ellis, Johnson, Kaufman, Parker, Rockwall Counties.
Tier I, Federal Motor Vehicle Control Program (FMVCP)	1994	Phased-in 1994–1997.
HGB Area On-road & Non-road Reformulated Gasoline (RFG).	1995 (Phase I), 2000 (Phase II)	Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, Waller Counties.
DFW Area On-road & Non-road RFG	1995 (Phase I), 2000 (Phase II)	Collin, Dallas, Denton, Tarrant Counties.
East Texas Regional use of gasoline with low Reid Vapor Pressure (RVP)[13].	2000	Ellis, Johnson, Kaufman, Parker, Rockwall, & Wise Counties.
HGB Area Inspection and Maintenance (I/M) Program	1997	Brazoria, Fort Bend, Galveston, Harris, Montgomery Counties.
National Low Emission Vehicle Program	2001.	
Tier II, FMVCP	2004	Phased-in from 2004–2009.
On-road & Non-road Texas Low Emission Diesel (TxLED).	2006.	
Ultra-Low Sulfur Diesel (ULSD)	2006	Phased-in for on-road diesel fuel 2006–2010, non-road diesel fuel 2007–2014.
2007 Heavy-Duty FMVCP	2007	Phased-in from 2007–2010.
Tier III, FMVCP (including Low Sulfur Gasoline)	2017	Phased-in from 2017–2025.

3. The EPA's Review of the State's Submission

As previously stated, pursuant to the D.C. Circuit decision, we must evaluate whether the May 13, 2020, contingency measures identified for the DFW and HGB areas are both prospective and conditional, *i.e.,* measures that would take effect only upon the area's failure to make RFP or attain by the applicable attainment date, not before.

Because the contingency measures that the state identified in the May 13, 2020, SIP submissions consist entirely of emission reductions from measures that will occur regardless of whether the nonattainment area fails to meet RFP or to attain by the applicable attainment date, these measures do not satisfy the requirements of CAA sections 172(c)(9) and 182(c)(9) that contingency measures

[9] See, *e.g.,* 62 FR 15844 (April 3, 1997) (direct final rule approving an Indiana ozone SIP revision); 62 FR 66279 (December 18, 1997) (final rule approving an Illinois ozone SIP revision); 66 FR 30811 (June 8, 2001) (direct final rule approving a Rhode Island ozone SIP revision); 66 FR 586 (January 3, 2001) (final rule approving District of Columbia, Maryland, and Virginia ozone SIP revisions); and 66 FR 634 (January 3, 2001) (final rule approving a Connecticut ozone SIP revision).

[10] May 13, 2020 RFP plan submission, Chapter 3, Tables 3–4 and 3–5.

[11] May 13, 2020 RFP demonstration submission, Chapter 4, Tables 4–17 and 4–18.

[12] I/M is not implemented in Wise County. See 82 FR 27122 (June 14, 2017).

[13] The Dallas-Fort Worth nonattainment area voluntarily opted into the RFG program. The 10-county DFW area includes counties with federal RFG and counties with Texas Regional Low RVP. The four counties with RFG are: Collin, Dallas, Denton, and Tarrant. The six counties with Texas Regional Low RVP are: Ellis, Johnson, Kaufman, Parker, Rockwall and Wise.

be both prospective and conditional. Thus, we must propose to disapprove the contingency measure element of the May 13, 2020, SIP submissions with respect to the contingency measures requirement for the HBG and DWF areas for purposes of the 2008 ozone NAAQS. EPA notes that this proposed action concerning contingency measures will have no impact upon EPA's prior determinations with respect to RFP or other nonattainment plan requirements for these areas and this NAAQS.

III. Proposed Action

In light of the decision in *Sierra Club, et al.* v. *EPA,* we are proposing to disapprove the contingency measure element of the May 13, 2020, Texas SIP revisions for Serious nonattainment areas under the 2008 8-hour ozone NAAQS. EPA proposes this disapproval with respect to the contingency measure requirements under CAA section 172(c)(9) and 182(c)(9) for the reasons discussed above.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA starts sanctions clocks. The May 13, 2020, SIP revision submissions, including the contingency measures element for the DFW and HGB 2008 ozone NAAQS serious nonattainment areas, do address requirements of part D, and thus if the EPA finalizes this proposed disapproval, sanction clocks would start on the effective date of the final action.[14] The state would be eligible for a protective finding for the DFW and HGB areas under the transportation conformity rule because the EPA has separately approved or will approve each area's RFP demonstration element of the May 13, 2020, SIP submission, which reflects adopted control measures and contains enforceable commitments that fully satisfy the emissions reductions requirements for RFP for the 2008 ozone NAAQS for each area.[15]

Additionally, finalizing the proposed disapproval of the contingency measure element would require that the EPA promulgate a Federal implementation plan under section 110(c) unless we approve a subsequent SIP submission or submissions from the state that correct the deficiencies that are the basis for the disapproval within 24 months.

The EPA is soliciting public comments on the proposed disapproval discussed in this document. We will accept comments from the public on this proposal for the next 30 days and will consider comments before taking final action.

IV. Environmental Justice Considerations

For this proposed action, the EPA conducted screening analyses of the 10-county DFW and 8-county HGB Serious ozone nonattainment areas using EPA's EJScreen (Version 2.1) environmental justice (EJ) screening and mapping tool.[16] The results of these analyses are being provided for informational and transparency purposes, and the EJScreen analysis reports are available in the docket for this rulemaking.

This proposed action identifies deficiencies in the contingency measure element of the May 13, 2020, Texas SIP revisions for the DFW and HGB Serious nonattainment areas under the 2008 8-hour ozone NAAQS. EPA's disapproval of these contingency measures, if finalized, would require that Texas submit plans for the DFW and HGB areas containing prospective and conditional contingency measures consistent with the D.C. Circuit decision, which would help to improve air quality in the entire affected nonattainment area through ongoing reductions of ozone precursor emissions should those measures be triggered. Information on ozone and its relationship to negative health impacts can be found at *https://www.epa.gov/ground-level-ozone-pollution.*[17]

As a result of EPA's full disapproval action, if finalized, TCEQ will be required to undertake additional actions to ensure that the DFW and HGB 2008 8-hour ozone NAAQS nonattainment areas meet CAA nonattainment area planning requirements. These corrective actions are within the state's discretion and therefore are not currently known, but would be expected to contribute to improved air quality in these areas and there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new information collection burdens, but will simply disapprove certain State requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed SIP disapproval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove certain State requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to disapprove certain pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the

[14] Under 40 CFR 52.35, the offset sanction in CAA section 179(b)(2) would be imposed 18 months after the effective date of that final disapproval action, and the highway funding sanction in CAA section 179(b)(1) would be imposed six months after the offset sanction. Sanction would not be imposed if the EPA determined that a subsequent SIP submission corrected the identified deficiencies before the applicable deadlines.

[15] 40 CFR 93.120(a)(3). Without a protective finding, the final disapproval would result in a conformity freeze, under which only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Programs (TIP) can proceed. Generally, during a freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, the EPA finds its motor vehicle emissions budget(s) adequate pursuant to § 93.118 or approves the submission, and conformity to the implementation plan revision is determined. Under a protective finding, the final disapproval of the contingency measures element would not result in a transportation conformity freeze in the DFW and HGB ozone nonattainment areas and the metropolitan planning organizations may continue to make transportation conformity determinations.

[16] See *https://www.epa.gov/ejscreen.*

[17] See, also, 80 FR 65292 (October 26, 2015).

distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that EPA is proposing to disapprove would not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new regulations, but will simply disapprove certain State requirements for inclusion in the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

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 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.''

The TCEQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an EJ analysis, as 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. Due to the nature of the action being taken here, this action is expected to have a 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 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, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 17, 2023.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2023–08498 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 309 and 310

RIN 0970–AC99

Elimination of the Tribal Non-Federal Share Requirement

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: OCSE proposes to eliminate the non-Federal share of program expenditures requirement for Tribal child support enforcement programs including the 90/10 and 80/20 cost sharing rates. Based upon the experiences of and consultations with Tribes and Tribal organizations, we have determined that the non-Federal share requirement limits growth, causes disruptions, and creates instability.

DATES: Consideration will be given to written comments on this notice of proposed rulemaking (NPRM) received on or before June 20, 2023.

ADDRESSES: You may submit comments, identified by [docket number and/or Regulatory Information Number (RIN) number], by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Written comments may be submitted to: Office of Child Support Enforcement, Attention: Director of Policy and Training, 330 C Street SW, Washington, DC 20201.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Chad Sawyer, Senior Policy Specialist, OCSE Division of Policy and Training, at *ocse.dpt@acf.hhs.gov* or (202) 774–2323. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Comments should be specific, address issues raised by the proposed rule, and explain reasons for any objections or

recommended changes. Additionally, we will be interested in comments that indicate agreement with the proposal. We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and received during the comment period. We will respond to comments in the preamble to the final rule.

Public Consultations

To obtain the broadest public participation possible on the proposed rule, OCSE conducted a combination public face-to-face and virtual Tribal Consultation on April 6, 2023. The importance of consultation with Indian Tribes was affirmed through Presidential Memoranda in 1994, 2004, 2009, 2021, and 2022 and Executive Order 13175 in 2000.

We published a Tribal Dear Colleague Letter (TDCL–23–02) with the specific location, date, and time of the consultation, and disseminated notices to all comprehensive and start-up Tribal child support enforcement programs. Additionally, OCSE collaborated with the Administration for Children and Families, Administration for Native Americans, and National Association of Tribal Child Support Directors to disseminate the letter to Tribes and Tribal organizations that do not have a child support enforcement program.

At the consultation, Tribal leaders or their designees in attendance made oral presentations and/or provided written comments for the record if they chose. After the publication of the proposed rule in the Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions, OCSE received supportive written comments from States and Tribal child support enforcement programs.

We encouraged persons who made oral presentations at the consultation to also submit written comments in support of their presentations. Testimonies were recorded and will be included in the public record of comments on the proposed rule.

Prior Consultations

45 CFR 309.130(d) requires a Tribe or Tribal organization [1] to provide a non-Federal share of program expenditures in the amount of 10 percent during the first 3 years of operation and 20 percent during subsequent years. Since the inception of the Tribal Child Support Enforcement Program, Tribes and Tribal organizations have submitted oral and written feedback, testimony, and blanket waiver requests regarding the non-Federal share requirement and cost sharing rates. The non-Federal share requirement and rates have been longstanding issues discussed at Tribal Consultations and OCSE listening sessions with Tribal child support directors.

In August 2011, one Tribe submitted testimony at the ACF Tribal Consultation regarding the non-Federal share requirement. The Tribe expressed that the cost sharing requirement was unreasonable since they had no land base, virtually no resources to provide any financial profit, and no taxable income to use for the non-Federal share. In the March 2012 ACF Tribal Consultation, another Tribe provided comments that they lacked a land base to meet the non-Federal share requirement. In April 2019, three Tribes and the National Association of Tribal Child Support Directors submitted testimony at the HHS Tribal Budget Consultation and requested consultation on the non-Federal share requirement. In September 2019, the non-Federal share requirement was on the 2019 ACF Tribal Consultation agenda. During the 2019 ACF Tribal Consultation, 20 Tribes provided testimony discussing the challenges they encounter in providing 20 percent of the approved and allowable program expenditures every fiscal year (FY). They described how the requirement limits growth, causes disruptions, and creates instability in their child support enforcement programs. For example, they mentioned competing with other Tribal departments for limited resources to operate their programs and having to make difficult budget and service reductions, despite the complex and growing needs of their communities. The 2019 ACF consultation also included Tribal written testimony requesting the repeal of the non-Federal share requirement. During the 2020 ACF Tribal Consultation, 2021 HHS Regional Consultation, and 2021 HHS Tribal Budget Consultation, Tribes continued to discuss their problems with meeting the non-Federal share, reiterate their request for an expedited resolution, and recommend the elimination of the non-Federal share requirement.

In addition to Tribal Consultations, OCSE conducted many virtual and in-person listening sessions with Tribal child support enforcement programs, held separately or in conjunction with Tribal child support enforcement conferences or association meetings. At these sessions, Tribes and Tribal organizations described the difficulties of providing the non-Federal share through cash or in-kind contributions during the first 3 years and thereafter. The issue of meeting the non-Federal share has also been raised multiple times at the ACF Tribal Advisory Committee meetings. Tribal leaders have asked for the elimination of the non-Federal share requirement during these meetings.

OCSE received several requests for blanket waivers of the non-Federal share of program expenditures that were beyond the waiver authority under 45 CFR 309.130(e). In 2016, 10 Tribes submitted a request for a blanket waiver based on the Tribal waiver provision in the HHS Tribal Consultation Policy. Also, in 2016, the National Association of Tribal Child Support Directors and the National Tribal Child Support Association submitted separate but similar letters to OCSE requesting a blanket waiver for the same reasons discussed in the Tribal requests. The 12 blanket waiver requests indicated that the non-Federal share requirement was disruptive and posed hardships. The requests also indicated that the non-Federal share requirement did not adequately reflect consultation, circumstances unique to Tribal communities, or authorizing statute that permits funding for Tribal child support enforcement programs. Specifically, they argued that section 455(f) of the Social Security Act (the Act) does not impose a match requirement and, therefore, OCSE should not impose one through regulation. Most recently, in FY 2022, a Tribe requested a blanket waiver for their child support program and for other programs based on the waiver flexibilities contained in Executive Order 13132.

OCSE denied all the blanket waiver requests of the non-Federal share of program expenditures in accordance with 45 CFR 309.130(e). Section 309.130(e) describes the circumstances and criteria for requesting a temporary waiver of the non-Federal share requirement. This regulation is binding on OCSE and does not permit blanket waivers. The Tribal waiver provisions under the HHS Tribal Consultation Policy and Executive Order 13132 are limited ''to the extent practicable and permitted by law.'' Given this limitation, OCSE had no authority to grant blanket waivers.

Statutory Authority

This NPRM is published in accordance with section 455(f) of the Social Security Act (the Act) (42 U.S.C. 655(f)). Section 455(f) of the Act requires the Secretary to issue regulations governing the grants to Tribes and Tribal organizations operating child support enforcement programs.

[1] See 45 CFR 309.05 for the definition of Tribe and Tribal organization.

This proposed rule is also published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Act (42 U.S.C. 1302). Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act.

Background

The Child Support Enforcement Program was established in 1975 under Title IV–D of the Social Security Act. It functions in all states and several Tribes and territories. State and Tribal child support enforcement programs locate noncustodial parents, establish paternity, establish and enforce support orders, modify orders when appropriate, collect and distribute child support payments, and refer parents to other services. They help to ensure that noncustodial parents provide financial support for their children. Child support payments play an important role in reducing child poverty, lifting nearly three-quarters of a million families out of poverty in 2017.[2]

Prior to the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–193), title IV–D of the Act did not include direct funding for Tribes and Tribal organizations seeking to operate their own child support enforcement programs. Indirect Federal funding was available for a Tribe or Tribal organization that entered into cooperative agreements with a state and the state delegated functions of their child support program to the Tribe or Tribal organization. PRWORA amended section 455(f) of the Act and authorized the Secretary to provide direct funding to Tribes and Tribal organizations to operate child support enforcement programs under title IV–D and to promulgate implementing regulations. Implementing regulations are contained in 45 CFR parts 309 and 310.

On August 21, 2000, OCSE published the NPRM for the Tribal Child Support Enforcement Program (65 FR 50800). Prior to publishing the NPRM, OCSE conducted numerous consultations, including a series of six Nation-to-Nation consultations with Tribes, Tribal organizations, and other interested parties across the country (65 FR 50804). OCSE also set up a toll free ''800'' number to allow for additional comments and input by Tribes and solicited further input from previous consultation participants to help OCSE understand the issues raised during the consultation process.

The NPRM proposed requirements that Tribes and Tribal organizations must meet to be eligible for title IV–D funding and provided guidance on how they could apply for and, upon approval, receive direct funding for the operation of their child support program (65 FR 50800). Based upon Tribal recommendations during the consultations, OCSE used the state child support enforcement program as a model but eased the technical requirements applicable to the states in recognition of the unique circumstances of Tribes and Tribal organizations (65 FR 50804). As such, the NPRM included a substantially lower cost sharing rate than is required of the states under title IV–D (65 FR 50823).

The NPRM stated that OCSE considered several different funding approaches that controlled costs, including performance-based funding, funding based on cost per child to operate the program, capping certain costs, and state-cost based funding (65 FR 50823). OCSE engaged in extensive deliberations over the issue of funding for Tribal child support enforcement programs. After careful consideration of the advantages and disadvantages of each cost control funding approach, ultimately, the Secretary proposed open-ended funding with a Tribal match (65 FR 50823). The NPRM proposed that Tribes and Tribal organizations provide a 10 percent match during the start-up period and first 3 years of operation, with the match increasing to 20 percent thereafter (65 FR 50823). The NPRM also included a waiver provision allowing the Secretary to waive the non-Federal share for Tribes and Tribal organizations that lacked sufficient resources and met certain specific criteria (65 FR 50823). Additionally, the NPRM indicated that ''if the Secretary determines based on experience and consultation with Tribes that the 80/20 match rate is disruptive to the program and imposes hardship to Tribes, the regulations will be revised accordingly'' (65 FR 50823).

The Tribal Child Support Enforcement Program final rule was promulgated on March 30, 2004 (hereinafter final rule) and included a revised cost sharing provision (69 FR 16638). In the final rule, OCSE indicated that it received numerous comments from Tribes objecting to the cost sharing requirement. In response, OCSE again expressed concern regarding the control of costs in the Tribal child support enforcement program, stating that ''unlike other Tribal grant programs, the funding for Tribal IV–D programs are not sum certain grants,'' meaning a specified and set amount of funds (69 FR 16667). OCSE further stated that the cost sharing requirement was maintained after determining ''that a non-Federal share in expenditures is necessary, based on the principle that better programs and better management result when local resources are invested'' (69 FR 16667). However, in response to comments, the match requirement was changed to allow 100 percent funding during the start-up period, not to exceed 2 years, and, capped at $500,000 per 45 CFR 309.130(c)(1). OCSE noted that the non-Federal match for start-up costs was eliminated in recognition that ''Tribes just beginning title IV–D child support enforcement may have very limited funds for this activity'' (69 FR 16646).

In accordance with 45 CFR 309.10(a) and (b), to apply for and receive Federal funding to operate a Tribal child support enforcement program, a Tribe or Tribal organization must have at least 100 children under the age of majority as defined by Tribal law or code, in the population subject to the jurisdiction of the Tribal court or administrative agency. The age of majority is the age at which a person is considered an adult, which is typically 18 years old. The requirement to have at least 100 children under the age of 18 years old helps to ensure that Tribes and Tribal organizations will have enough potential child support cases to be cost effective. However, 45 CFR 309.10(c) permits a waiver of this requirement when a Tribe or Tribal organizations submits a request with the required information demonstrating that it can provide the services required under 45 CFR part 309 in a cost-effective manner even though the population subject to Tribal jurisdiction includes fewer than 100 children.

The Tribal child support enforcement program regulation permits Federal funding in two ways. When Tribes or Tribal organizations do not meet the regulatory requirements to operate a child support enforcement program, they may apply for start-up funding in accordance with 45 CFR 309.16. Start-up funding enables Tribes and Tribal organizations with the basic governmental and administrative capabilities to work towards meeting the requirements to operate a child support enforcement program in accordance with the regulation. The start-up application must include a program development plan, detailing the specific steps a Tribe or Tribal organization will

[2] See Assistant Secretary for Planning and Evaluation, *Fact Sheet: Approaches for engaging fathers in child support programs* (October 2021), available at *https://aspe.hhs.gov/reports/father-engagement-child-support.*

take to become compliant with the requirements of 45 CFR 309.65(a), and the timeframe associated with each step. Federal funding for start-up costs is limited to $500,000, which must be used within two years after the first day of the quarter after the start-up application was approved, in accordance with 45 CFR 309.16(c).

When Tribes or Tribal organizations determine that they meet the regulatory requirements to operate a child support enforcement program, they may apply for comprehensive funding in accordance with 45 CFR 309.15. The application must include a Tribal IV–D plan that demonstrates compliance with the 14 required elements described in 45 CFR 309.65(a). For example, a Tribe must have procedures to accept all applications, safeguard personal and confidential information, and locate noncustodial parents and their assets. During the first 3 years of operating a child support program, Tribes or Tribal organizations receive Federal grant funds equal to 90 percent of the total amount of approved and allowable expenditures, in accordance with 45 CFR 309.130(c)(2). During the fourth year and subsequent years, Tribes or Tribal organizations receive Federal grant funds equal to 80 percent of the total amount of approved and allowable expenditures, in accordance with 45 CFR 309.130(c)(3). Tribes and Tribal organizations must provide the non-Federal share of program expenditures, either 10 percent or 20 percent, with cash or in-kind contributions pursuant to 45 CFR 309.130(d).

45 CFR 309.130(e) permits, under certain circumstances, a temporary waiver of part or all of the non-Federal share of program expenditures. This provision includes two types of temporary waiver requests that a Tribe or Tribal organization may submit for consideration: ''anticipated temporary waiver request'' and ''emergency waiver request.'' Both waiver requests must be submitted in accordance with the procedures specified in 45 CFR 309.130(e)(2) through (4). These procedures require the submission of extensive information and documentation to demonstrate the temporary lack of resources and justify the waiver request.

Under 45 CFR 309.130(e)(1)(i), when Tribes or Tribal organizations anticipate that they will be temporarily unable to contribute part or all of the required non-Federal share of program funding, they must submit an anticipated temporary waiver request. The anticipated waiver, due no later than 60 days before the start of the funding period, is more restrictive because untimely or incomplete requests will not be considered, in accordance with 45 CFR 309.130(e)(1)(i). Many Tribal child support enforcement programs have been denied anticipated waivers because of untimely or incomplete requests. An untimely anticipated waiver request means a Tribe submitted the request after the deadline of August 1 pursuant to 45 CFR 309.130(e)(1)(i). An incomplete anticipated waiver request means a Tribe did not include all the information required by 45 CFR 309.130(e)(2) through (4), such as portions of the Tribal budget sufficient to demonstrate the extent of the funding shortfall and uncommitted funds.

Under 45 CFR 309.130(e)(1)(ii), after the start of the funding period, if an emergency situation occurs, such as a hurricane or flood, that warrants a waiver of the non-Federal share of program expenditures, Tribes or Tribal organizations may submit an emergency waiver request. Over the years, the emergency waiver has been requested more frequently than the anticipated waiver for a number of reasons, most recently due to natural disasters and public health emergencies.

Justification

The purpose of this proposed rule is to eliminate the non-Federal share requirement for Tribal child support enforcement programs because it limits growth, causes disruptions, and creates instability. The proposed rule reflects OCSE's comment in the 2000 NPRM that the matching requirement would be revised accordingly if the Secretary determines, based on experience gained through operations of Tribal child support enforcement programs and consultation with Tribes, that the 80/20 match rate is disruptive to the program and imposes hardship to Tribes (65 FR 50823). The proposed rule also responds to feedback and recommendations submitted during Tribal Consultations and OCSE listening sessions about the hardship of meeting the non-Federal share requirement.

Tribal child support enforcement programs are beneficial for Tribal Nations, particularly given their ability to provide services to families in a manner that is consistent with tribal values and cultures. For example, Tribes or Tribal organizations exercise their sovereignty over their members, ensure parental responsibility, increase family disposable income, incorporate Tribal culture and traditions, offer unique services like non-cash support, and reduce the need for other supportive services such as Temporary Assistance for Needy Families (TANF). In FY 2021, Tribal child support enforcement programs collected $53 million in child support payments and 97 percent went to families.[3] Native American children in Tribal areas with child support enforcement programs are in great need of child support, especially since 53 percent of Native American children in these areas lived in single-parent families.[4] According to data from the 2015 American Community Survey, nearly one-third of Native Americans living in Tribal areas with a child support program lived below the poverty line in 2015 (that year, the poverty line for a family of three was $20,090).[5] This poverty rate was more than twice the poverty rate for Americans in general (15 percent). Particularly stark is the poverty rate among Native American children living in these areas, which was 40 percent.[6]

Tribal child support enforcement programs are also beneficial for states, specifically in enforcing state child support orders and collecting child support payments in intergovernmental cases. 45 CFR 309.120(a) requires a Tribal child support enforcement program to extend the full range of services to respond to all requests from, and cooperate with, state and other Tribal child support enforcement programs. This includes recognizing and enforcing child support orders issued by a state or another Tribe or Tribal organization, in accordance with 45 CFR 309.120(b). For example, when a Tribal child support enforcement program receives a request for assistance from a state, they register the state child support order in Tribal court and enforce it. Then the Tribe collects the child support payment from the noncustodial parent and sends it to the state in accordance with 45 CFR 309.115(d). Without this assistance from Tribal child support enforcement programs, states are, for the most part, unable to collect child support payments because they lack jurisdiction to enforce their child support orders in Tribal Nations. In FY 2021, Tribal child support enforcement programs collected and sent $11 million in child support

[3] See OCSE 2021 Tribal Infographic at *https://www.acf.hhs.gov/sites/default/files/documents/ocse/tribal_infographic_2021.pdf.*

[4] See OCSE Exploring Tribal Demographic Data: Part Two at *https://www.acf.hhs.gov/css/ocsedatablog/2023/01/exploring-tribal-demographic-data-part-two.*

[5] See OCSE Exploring Tribal Demographic Data: Part One at *https://www.acf.hhs.gov/css/ocsedatablog/2022/11/exploring-tribal-demographic-data-part-one.*

[6] Id.

payments to states, other Tribes, and countries.[7]

Yet, to date, few Tribes and Tribal organizations operate child support enforcement programs, although funding was authorized 18 years ago. Out of the 574 federally recognized Tribes, only 60 operate Tribal child support enforcement programs despite the flexible eligibility requirements to receive program funding.[8] A majority of the Tribal child support enforcement programs were established between 2008 and 2014. In the past 5 years, only one Tribal child support enforcement program was established. Currently, there is only one Tribe in the start-up phase, completing the necessary work to meet the regulatory requirements to operate a Tribal child support enforcement program. OCSE has heard that the non-Federal share requirement is a major barrier preventing Tribes and Tribal organizations from applying for program funding, despite the need for Tribal child support enforcement services. For example, during the 2019 ACF Tribal Consultation, one Tribe testified that they had been considering adding a child support program; however, hearing all the testimony with concerns about the non-Federal share requirement dissuaded them from starting one. This testimony mirrors comments OCSE staff have heard from prospective Tribes during presentations or conversations about the Tribal child support enforcement program.

Many Tribes and Tribal organizations face systemic, historical, and ongoing issues that impact their ability to meet the non-Federal share.[9] For example, some Tribes have high rates of unemployment and families living below the poverty level, have limited and vulnerable Tribal enterprises that generate revenue, are in rural underdeveloped communities, are exposed to greater environmental threats, and lack robust economies. In fact, 45 CFR 309.130(e)(4) includes some of these same issues that impact a Tribe's ability to meet the non-Federal share and support a request to waive this requirement. Additionally, most Tribal child support directors have indicated that they often compete with other Tribal departments and programs to obtain limited Tribal government funding. Economic downturns and disasters in Tribal Nations reduce these limited government funds even further and force Tribal officials to make tough decisions about how to allocate and use funds and resources. These issues, at least in part, make the non-Federal match too burdensome.

Federal laws regarding real property exacerbate the burden by restricting how Tribes and Tribal organizations can claim Tribally owned property as part of their non-Federal share of program expenditures. Many Tribal child support enforcement programs are housed in Tribally owned property. When an entity owns a building and/or office space and it is claimed or contributed to the award, 45 CFR 75.436 requires that the building and/or office space must be valued using depreciation, whether claimed as an administrative cost or for cost sharing purposes. Depreciation must be computed in accordance with 45 CFR 75.436(d). This means that the Tribal property cannot be assessed at the fair market value as if the Tribal child support enforcement program is renting or leasing it. As such, Tribal child support enforcement programs claim depreciation, maintenance, and insurance (OCSE–IM–20–05). For these Tribes, using depreciated value may be substantially less than using fair market value for a tribally owned property or office space.

Even if a Tribe or Tribal organization operates a child support enforcement program, the non-Federal match requires the program be limited in other ways, which negatively impacts vulnerable Tribal families and children. Meeting the non-Federal share disproportionately drives programmatic and fiscal decisions. For example, most Tribal child support enforcement programs use incurred cost from Tribal court personnel who process child support cases as part of their contribution toward the non-Federal share. The number of such cases fluctuates and relies on parents attending court hearings, which may pose a burden on parents with low incomes, transportation challenges, or disabilities. Most Tribal child support directors have indicated that they had to defer filling vacancies, performing automation or system upgrades, and paying for required security assessments to access the Federal Parent Locator Service, which helps in locating noncustodial parents and their assets. Some Tribal child support directors have also indicated that they have delayed acquiring any system automation due to the cost and subsequently their proportionate non-Federal share and are, instead, using Microsoft tools such as Word and Excel to manage their caseloads. As a result, many Tribal child support enforcement programs struggle to operate with resource deficits.

These resource deficits prevent some Tribal programs from expanding beyond the delivery of core child support services, such as establishing paternity and locating noncustodial parents and their assets. Many cannot provide intensive case management for low-income noncustodial parents due to staffing shortages. Intensive case management is used to identify barriers to paying child support, make appropriate referrals, monitor compliance and outcomes, and collaborate with other social service programs to ensure noncustodial parents receive services that help them become responsible parents and pay consistent and reliable child support. Many also lack the resources to pursue discretionary, competitive grant opportunities awarded under section 1115 of the Act, which promote innovation and research. Using funds from section 1115(a) of the Act, OCSE offers grant opportunities periodically, based on available funding each year, to state and Tribal child support enforcement programs, or their state umbrella agencies. Section 1115 demonstration grants must be used for research and to improve the child support enforcement program. Each funding opportunity is unique, and applications must respond to the outlined project goals and requirements in the announcement.

During Tribal Consultations and listening sessions, many Tribal child support enforcement programs have expressed their fears about closing their child support program because they cannot provide the required non-Federal share. When a Tribe cannot afford the non-Federal share and does not obtain a waiver of this requirement, they do not receive any Federal funds to operate their child support enforcement program. Consequently, they are forced to close their program and may refer their Tribal parents to another Tribe for child support services. In FY 2017, a Tribe closed their child support enforcement program because they were unable to meet the non-Federal share of program expenditures. In the Tribe's letter regarding the closure of their program, they shared that the match contribution for a Tribal child support enforcement program is a barrier for any Tribe to be successful. In the FYs 2020, 2021, and 2022 waiver requests, most Tribes and Tribal organizations indicated they were in jeopardy of

[7] See OCSE 2021 Tribal Infographic at *https://www.acf.hhs.gov/sites/default/files/documents/ocse/tribal_infographic_2021.pdf.*

[8] See U.S. Department of Interior Indian Affairs Tribal Leader Directory at *https://www.bia.gov/service/tribal-leaders-directory.*

[9] See U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (December 2018), available at *https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf.*

shutting down without a waiver of part or all of the required non-Federal share. They indicated that they were unclear when Tribal enterprises, which were already vulnerable before the economic downturn, would recover and generate enough revenue to help them meet the non-Federal share. Additionally, although 45 CFR 309.75(e) permits Tribal child support enforcement programs to charge an application fee or recover costs, most Tribes and Tribal organizations do not charge fees or recover costs since many Tribal families are low income. Therefore, they do not generate program income that could be used for the non-Federal share.

Temporary waivers of the non-Federal share of program expenditures do not provide a sufficient or permanent solution. Although 45 CFR 309.130(e)(4) identifies issues faced by most Tribes and Tribal organizations, such as little or no economic development, it also requires documentary evidence to support statements about how these issues impact meeting the non-Federal share. Meeting these requirements in annual applications for a waiver due to intractable economic reasons or for unforeseen emergencies imposes a significant administrative and paperwork burden for Tribal child support enforcement programs. It requires Tribes and Tribal organizations to redirect time and resources away from administering their programs and meeting the pressing needs of their communities when they are often already under resourced. Over the years, many Tribal child support enforcement programs have indicated that they have not applied for a waiver due to the extensive submission procedures, which act as barriers to accessing relief. In response, Tribes submitted blanket waiver requests, as indicated previously, to make these waivers of the non-Federal share more accessible and effective over multiple fiscal years.

Until recently, OCSE received and approved very few waiver requests. For example, between FYs 2016 and 2019, OCSE granted 10 waivers of the non-Federal share. Beginning in 2020 due to the declared national public health emergency for the COVID–19 pandemic, OCSE provided flexibilities for emergency waiver submissions, which encouraged more Tribes and Tribal organizations to apply. Under the pandemic flexibilities, OCSE understood that Tribal child support enforcement programs were unable to provide a portion of their Tribal budget or make attempts to secure the necessary funds and in-kind contributions from other sources in accordance with 45 CFR 309.130(e)(2)(iii) and (v). As a result, OCSE approved waivers in larger numbers: 31 in FY 2020, 27 in FY 2021, and 12 in FY 2022. The emergency waiver flexibilities will end when the COVID–19 Public Health Emergency ends on May 11, 2023 (see OCSE–DCL–23–04). But the need for these waivers was not just due to the pandemic. Instead, the pandemic exacerbated and highlighted longstanding difficulties with meeting the non-Federal share. Tribes and Tribal organizations may be unable to overcome the procedural barriers to apply for and receive a waiver and may have to terminate their child support enforcement program if they are unable to provide the non-Federal share or receive a waiver. Eliminating the non-Federal share will provide a permanent solution to the administrative burdens, access barriers, and limited effect of the temporary waivers.

Waiver requests also impose an administrative burden on OCSE, without providing a long-term solution. By eliminating the non-Federal share requirement, OCSE can better use its expertise, resources, and efforts to build collaborative, government-to-government relationships with Tribes and Tribal organizations to foster innovation, engage in human centered design projects, and focus on topics that advance program priorities and improve outcomes for recipients of Tribal child support enforcement services.

Although OCSE previously determined during drafting of the Tribal Child Support Enforcement Program regulations that a non-Federal match was important to ensure ''better programs and better management'' (69 FR 16667), it has now reconsidered that conclusion after seeing the Tribal child support enforcement program in practice during the past two decades. Based on its experience, OCSE now concludes that its oversight tools are sufficient, without the non-Federal share match, to monitor use of funds for IV–D expenditures and consider cost containment. The Tribes show in their budget submissions and communications with OCSE that they are engaged in operating successful programs and using Federal funds properly, efficiently, and effectively, in accordance with 45 CFR 309.60(b). The primary method for evaluating and ensuring allowable and appropriate costs is through the budget submission, review, and approval process. 45 CFR 309.15(c) requires Tribal child support enforcement programs to submit a budget to receive Title IV–D funding to administer their child support enforcement programs. Budgets must include the detailed information specified in 45 CFR 309.130(b) and OCSE guidance, such as quarterly estimate of expenditures, narrative justification for each cost category, and copies of contracts (see Tribal Child Support Budget Toolbox and OCSE PIQT–21–01).[10] OCSE and OGM review Tribal budget submissions for compliance with 45 CFR parts 309, 310, 75, and other applicable Federal laws. During the review of Tribal budgets, OCSE and OGM examine the estimates of program expenditures, determine whether the budget narratives and documentation justify costs, and approve allowable costs charged to the Title IV–D grant before awarding funds. OCSE reviews the entire budget in detail to ensure the costs are reasonable and necessary given the caseload size and other demographic and geographic factors. OCSE compares contract costs to industry standards and similar contracts from other child support enforcement programs. For questionable costs, OCSE works with the Tribe to obtain additional information or revise or remove those costs when warranted. For example, OCSE determined that a Tribe's contract costs for information technology development were higher than the industry standard and worked with the Tribe to secure a reduction in the costs before approving the contract.

45 CFR 309.145 describes the allowable costs for Tribal child support enforcement programs and requires such costs to be reasonable, necessary, and allocable to the program. 45 CFR 309.130(h) mandates compliance with 45 CFR part 75, which describes the uniform administrative requirements and cost principles. 45 CFR 75.403 through 75.405 provide specific requirements for determining whether costs are allowable, reasonable, and allocable. Since OCSE must approve a Tribe's budget before OGM issues a notice of grant award, OCSE has direct oversight over Tribal expenditures before Tribal child support enforcement programs drawdown and use Title IV–D funds at the start of the fiscal year. After OCSE approves a Tribe's budget, a Tribe may request additional funds by submitting the information specified in 45 CFR 309.130(f)(1). If the increase in funds impacts the Tribal IV–D plan, the Tribe must also submit a plan amendment in accordance with 45 CFR 309.130(f)(2). A Tribe must provide the required information and documentation and the costs must

[10] See the optional Tribal Budget and Justification Narrative Template at *https://www.acf.hhs.gov/sites/default/files/documents/ocse/Tribal_budget_justification_narrative_template.docx.*

comply with the Federal regulations before OCSE approves the request for an increase in funds. This ensures that increases in approved Tribal budgets are reasonable, necessary, allowable, and appropriate.

Additionally, OCSE uses a variety of technical assistance methods to assess needs and provide support to Tribes on the uniform grant requirements and cost principles. When reviewing Tribal budgets, OCSE analyzes issues and trends in expenditures and uses that information to deliver training and to ensure funds are used efficiently and effectively for all parties. OCSE also provides annual and tailored training and technical assistance about Tribal budget and grant requirements during site visits, regional meetings, national webinars, and conferences. Site visits help OCSE to obtain and understand information about how Tribes and Tribal organizations use Title IV–D funds to operate and administer their Tribal child support enforcement programs. OCSE regional office staff work closely with Tribal child support staff to answer questions, share best practices, review budgets and grant reports, and monitor the administration and performance of Tribal child support enforcement programs.

As evidenced by years of Federal review, Tribes and Tribal organizations have demonstrated the importance of spending Federal grant funds prudently, efficiently, and effectively. Tribes are invested in helping noncustodial and custodial parents support their children financially and emotionally. Accordingly, OCSE is now of the view that Tribes and Tribal organizations will continue to provide Tribal resources, such as Tribally owned building or office space, to ensure the success of their Tribal child support enforcement programs—even in the absence of a mandatory non-Federal match. The Tribal child support enforcement program regulations provide OCSE with sufficient authority to control costs and monitor compliance without the non-Federal share requirement. As a result, the overall Tribal child support enforcement program expenditures of existing Tribes will not rise substantially beyond normal cost increases due to factors like inflation, filling vacancies, or upgrading equipment and systems. The impact to the Federal budget will be modest.

Even with the elimination of the non-Federal share, OCSE does not expect that every federally recognized Tribe or Tribal organization will request funding to operate a Tribal child support enforcement program, meaning that OCSE expects only a modest and gradual increase in program expenditures. Prospective Tribes and Tribal organizations may not have the needed administrative capacity or infrastructure to operate a child support enforcement program. They may not have 100 children under the age of majority. Although they may request a waiver of this requirement (45 CFR 309.10(c)), the waiver must demonstrate that their prospective Tribal child support enforcement program will be cost effective (45 CFR 309.10(c)(1)(iii)). Additionally, prospective Tribes and Tribal organizations may not want to comply with the extensive requirements and procedures required to receive funding (45 CFR 309.65). A Tribal court can hear child support cases without the Tribe administering a child support enforcement program. Administering a Tribal child support enforcement program and working with parents on such a vulnerable and sensitive subject is complex and demanding. Instead of operating their own Tribal child support enforcement program, they may jointly operate a program or may receive child support services from an existing Tribal child support enforcement program. In sum, and for the reasons discussed above, OSCE projects the number of new Tribal child support enforcement programs to grow modestly before plateauing, thus preventing a dramatic increase in Federal costs. And any such increase in Federal costs is offset by the benefits that this proposed rule would provide in helping to prevent existing Tribal child support enforcement programs from closing and provide a permanent solution to the problems related to the non-Federal share requirement. However, even if eliminating the non-Federal share results in many more Tribes and Tribal organizations applying for and receiving approval to operate a child support enforcement program, Tribal participation in this program is, in fact, what Congress intended when it authorized funding under PRWORA. This will ensure the opportunity for Tribal families to receive child support enforcement services that reflect and affirm their Tribal cultures and traditions, create financial stability, and family economic well-being to help lift Tribal families out of poverty.

Section-By-Section Discussion of the Provisions of This Proposed Rule

This NPRM proposes to eliminate the non-Federal share for Tribal child support enforcement programs. The following is a discussion of the regulatory provisions included in this NPRM.

Section 309.15 What is a Tribal IV–D program application?

In § 309.15(a)(2)(iii), we propose removing the language ''; and either:'' at the end of that provision and inserting a ''.'' in their place. Section 309.15(a)(2)(iv) requires the initial application for funding to include a statement that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures available. Section 309.15(a)(2)(v) permits a request for a waiver of the non-Federal share in accordance with § 309.130(e). We propose removing § 309.15(a)(2)(iv) and (v) due to the elimination of the non-Federal share.

Section 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?

Section 309.45(g) indicates that disapproval of start-up funding, a request for waiver of the 100-child rule, and a request for waiver of the non-Federal Tribal share is not subject to administrative appeal. We propose amending § 309.45(g) by removing '', and a request for waiver of the non-Federal Tribal share.'' Revised paragraph (g) will read as follows: ''Disapproval of start-up funding and a request for waiver of the 100-child rule is not subject to administrative appeal.''

Section 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

Section 309.75(e) describes the requirements for a Tribe and Tribal organization that intends to charge an application fee or recover costs in excess of the fee. Collected fees and recovered costs are considered program income and deducted from total allowable costs in accordance with 45 CFR 309.75(e)(4) and 45 CFR 75.307(e)(1). Due to the proposed elimination of the non-Federal share requirement, we propose revising § 309.75(e) to require Tribal child support enforcement programs to have procedures that prohibit charging fees and recovering costs and to remove paragraphs (e)(1) through (4).

Section 309.85 What records must a Tribe or Tribal organization agree to maintain in a Tribal IV–D plan?

Section 309.85(a)(6) requires a Tribe or Tribal organization to maintain records on any fees charged and collected, if applicable. As previously stated, collected fees and recovered costs are considered program income and deducted from total allowable costs in accordance with 45 CFR 309.75(e)(4) and 45 CFR 75.307(e)(1). Due to the

proposed elimination of the non-Federal share requirement, we propose removing § 309.85(a)(6) and redesignating § 309.85(a)(7) to (a)(6).

Section 309.130 How will Tribal IV–D programs be funded and what forms are required?

In § 309.130(b)(2)(iii), we propose removing the language ''and for funding under § 309.65(a) either:'' at the end of that provision and replacing it with a ''.''. Section 309.130(b)(2)(iv) requires the annual Tribal budget submissions to include a statement certifying that the Tribe or Tribal organization has or will have the non-Federal share of program expenditures. Section 309.130(b)(2)(v) permits a request for a waiver of the non-Federal share in accordance with paragraph (e) of this section. We propose removing § 309.130(b)(2)(iv) and (v) due to the elimination of the non-Federal share requirement.

Section 309.130(c) describes the Federal share of program expenditures for start-up funding and for initial and ongoing grant funding to administer a Tribal child support enforcement program. We propose amending § 309.130(c)(2) by removing ''during a 3-year period,'' replacing ''90'' with ''100'', and adding ''and thereafter'' following ''made during that period.'' We propose amending § 309.130(c)(3) by removing § 309.130(c)(3)(i), redesignating paragraph (c)(3)(ii) to (c)(3), and replacing ''90'' with ''100''. We propose these revisions to indicate that the Federal share of program expenditures will be 100 percent due to the elimination of the non-Federal share requirement.

Section 309.130(d) describes the requirements for the non-Federal share of program expenditures. We propose removing § 309.130(d) due to the elimination of the non-Federal share requirement.

Section 309.130(e) describes the requirements for permitting a temporary waiver of part or all of the non-Federal share of program expenditures. We propose removing § 309.130(e) due to the elimination of the non-Federal share requirement.

Section 309.130(f) describes the requirements for requesting increases in the approved Tribal budget and § 309.130(f)(3) addresses how budget increases impact the non-Federal share. We propose redesignating § 309.130(f) to 309.130(d) and removing § 309.130(f)(3).

Section 309.130(g) describes how to obtain Federal funds and § 309.130(h) requires compliance with the uniform administrative requirements and cost principles. We propose redesignating § 309.130(g) and (h) to (e) and (f), respectively.

Section 309.155 What uses of Tribal IV–D program funds are not allowable?

Section 309.155(c) prohibits a Tribe or Tribal organization from using Federal IV–D funds for any expenditures that have been reimbursed by fees or costs collected, including any fee collected from a state. We propose removing § 309.155(c) and redesignating § 309.155(d), (e), (f), and (g) to (c), (d), (e), and (f), respectively.

Section 309.170 What statistical and narrative reporting requirements apply to Tribal IV–D programs?

Section 309.170(b)(8) requires a Tribe or Tribal organization to provide annual information and statistics on the total amount of fees and costs recovered. We propose removing § 309.170(b)(8) and redesignating § 309.170(b)(9) to (b)(8).

Section 310.10 What are the functional requirements for the Model Tribal IV–D System?

Section 310.10(c) requires the Model Tribal IV–D System to record and report any fees collected, either directly or by interfacing with state or Tribal financial management and expenditure information. We propose removing § 310.10(c) and redesignating § 310.10(d), (e), (f), (g), and (h) to (c), (d), (e), (f), and (g), respectively.

Section 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation?

Section 310.20(a) describes the conditions that must be met for Federal financial participation for Computerized Tribal IV–D Systems. We propose replacing ''90'' with ''100''.

Paperwork Reduction Act

No new information collection requirements are imposed by these regulations.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this proposed rule will not result in a significant impact on a substantial number of small entities. The primary impact is on Tribal governments. Tribal governments are not considered small entities under the Regulatory Flexibility Act.

Regulatory Impact Analysis

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule meets the standards of Executive Orders 12866 and 13563 because it creates equity, promotes predictability, and reduces burdens and hardships for Tribal child support enforcement programs. The non-Federal share requirement limits growth, causes disruptions, and creates instability. Eliminating it encourages expansion of services and enforcement remedies, removes a financial barrier for prospective Tribes and Tribal organizations, prevents closure of existing Tribal child support enforcement programs, and provides a permanent solution to longstanding problems. This will ensure Tribal families receive child support services that reflect and affirm their cultures and traditions and that promote parental responsibility and increase disposable family income and financial stability.

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this NPRM is significant and was accordingly reviewed by OMB.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). ACF does not anticipate that this proposed rulemaking is likely to have an economic impact of $100 million or more in any 1 year, and, therefore, does not meet the definition of ''economically significant'' under Executive Order 12866. Based upon the increase in program expenditures from existing Tribal child support enforcement programs and the modest growth of new programs due to the elimination of the non-Federal share, we anticipate that the costs associated with this proposed rule will be the following: FY 2025 $17.2m; FY 2026 $19m; FY 2027 $26.4m; FY 2028 34.3m; and FY 2029 $42.6m.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an annual expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $164 million. This proposed rule does not impose any mandates on state, local, or Tribal governments, or the private sector, that will result in an annual expenditure of $164 million or more.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. We certify that we have assessed this proposed rule's impact on the well-being of families. The purpose of the Tribal child support enforcement program is to strengthen the financial and social stability of families. This proposed rule eliminates the burden and hardships imposed by non-Federal share requirement for Tribal child support enforcement programs, which limits growth, causes disruptions, and creates instability. Eliminating it encourages expansion of services and enforcement remedies, removes a financial barrier for prospective Tribes and Tribal organizations, and prevents closure of existing Tribal child support enforcement programs. The proposed rule will have a positive effect on family well-being. It will ensure Tribal families receive child support services that reflect and affirm their cultures and traditions and that promote parental responsibility and increase disposable family income and financial stability.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism impact as defined in the executive order.

List of Subjects

45 CFR Part 309

Child support, Grant programs—social programs, Indians—tribal government, Reporting and record keeping requirements.

45 CFR Part 310

Child support, Grant programs—social programs, Indians.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 309 and 310 as set forth below:

PART 309—TRIBAL CHILD SUPPORT ENFORCEMENT (IV–D PROGRAM)

■ 1. The authority citation for part 309 continues to read as follows:

Authority: 42 U.S.C. 655(f) and 1302.

■ 2. Amend § 309.15 by:
■ a. Revising paragraph (a)(2)(iii); and
■ b. Removing (a)(2)(iv) and (v).

The revision reads as follows:

§ 309.15 What is a Tribal IV–D program application?

(a) * * *

(2) * * *

(iii) A narrative justification for each cost category on the form.

* * * * *

■ 3. Amend § 309.45 by revising paragraph (g) to read as follows:

§ 309.45 When and how may a Tribe or Tribal organization request reconsideration of a disapproval action?

* * * * *

(g) Disapproval of start-up funding and a request for waiver of the 100-child rule is not subject to administrative appeal.

* * * * *

■ 4. Amend § 309.75 by revising paragraph (e) introductory text and removing paragraphs (e)(1) through (4) to read as follows:

§ 309.75 What administrative and management procedures must a Tribe or Tribal organization include in a Tribal IV–D plan?

* * * * *

(e) Procedures that prohibit charging fees and recovering costs.

§ 309.85 [Amended]

■ 5. Amend § 309.85 by removing paragraph (a)(6) and redesignating paragraph (a)(7) as new paragraph (a)(6).
■ 6. Amend § 309.130 by:
■ a. Revising paragraphs (b)(2)(iii) and (c)(2);
■ b. Removing paragraph (c)(3)(i);
■ c. Redesiginating paragraph (c)(3)(ii) as paragraph (c)(3) and revising newly designated paragraph (c)(3);
■ d. Removing paragraph (d) and (e);
■ e. Redesignating paragraph (f) as paragraph (d) and revising newly designated paragraph (d); and
■ f. Redesignating paragraphs (g) and (h) as paragraphs (e) and (f).

The revisions read as follows:

§ 309.130 How will Tribal IV–D programs be funded and what forms are required?

* * * * *

(b) * * *

(2) * * *

(iii) A narrative justification for each cost category on the form.

* * * * *

(c) * * *

(2) Beginning with the first day of the first quarter of the funding grant specified under § 309.135(a)(2), a Tribe or Tribal organization will receive Federal grant funds equal to 100 percent of the total amount of approved and allowable expenditures made during that period and thereafter for the administration of the Tribal child support enforcement program.

(3) A Tribe or Tribal organization will receive Federal grant funds equal to 100 percent of pre-approved costs of installing the Model Tribal IV–D System.

(d) *Increase in approved budget.* (1) A Tribe or Tribal organization may request an increase in the approved amount of its current budget by submitting a revised SF 424A to ACF and explaining why it needs the additional funds. The Tribe or Tribal organization should submit this request at least 60 days before additional funds are needed, to allow the Secretary adequate time to review the estimates and issue a revised grant award, if appropriate.

(2) If the change in Tribal IV–D budget estimate results from a change in the Tribal IV–D plan, the Tribe or Tribal organization must submit a plan amendment in accordance with § 309.35(e), a revised SF 424, and a revised SF 424A with its request for additional funding. The effective date of a plan amendment may not be earlier than the first day of the fiscal quarter in which an approvable plan is submitted in accordance with § 309.35(f) of this part. The Secretary must approve the plan amendment before approving any additional funding.

§ 309.155 [Amended]

■ 7. Amend § 309.155 by removing paragraph (c) and redesignating paragraphs (d) through (g) as paragraphs (c) through (f);

§ 309.170 [Amended]

■ 8. Amend § 309.170 by removing paragraph (b)(8) and redesignating paragraph (b)(9) as new paragraph (b)(8)'

PART 310—TRIBAL CHILD SUPPORT ENFORCEMENT (IV–D PROGRAM)

■ 9. The authority citation for part 310 continues to read as follows:

Authority: 42 U.S.C. 655(f) and 1302.

§ 310.10 [Amended]

■ 10. Amend § 310.10 by removing paragraph (c) and redesignating paragraphs (d) through (h) as paragraphs (c) through (g).

■ 11. Amend § 310.20 by revising paragraph (a) to read as follows:

§ 310.20 What are the conditions for funding the installation, operation, maintenance and enhancement of Computerized Tribal IV–D Systems and Office Automation?

(a) *Conditions that must be met for FFP at the applicable matching rate in § 309.130(c) of this chapter for Computerized Tribal IV–D Systems.* The following conditions must be met to obtain 100 percent FFP in the costs of installation of the Model Tribal IV–D System and FFP at the applicable matching rate under § 309.130(c) of this chapter in the costs of operation, maintenance, and enhancement of a Computerized Tribal IV–D System:

* * * * *

[FR Doc. 2023–07861 Filed 4–20–23; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2023–0012]

RIN 2127–AM54

Side Underride Guards

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This ANPRM responds to Section 23011(c) of the November 2021 Infrastructure Investment and Jobs Act (IIJA), commonly referred to as the Bipartisan Infrastructure Law (BIL), which directs the Secretary to conduct research on side underride guards to better understand their overall effectiveness, and assess the feasibility, benefits, costs, and other impacts of installing side underride guards on trailers and semitrailers. The BIL further directs the Secretary to report the findings of the research in a **Federal Register** notice to seek public comment. In addition, this ANPRM also responds to a petition for rulemaking from Ms. Marianne Karth and the Truck Safety Coalition (TSC).

DATES: You should submit your comments early enough to ensure that the docket receives them not later than June 20, 2023.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by 49 CFR part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact him for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, Appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket at the address given above.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Ms. Lina Valivullah, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590 (telephone) 202–366–8786, (email) *Lina.Valivullah@dot.gov.*

For legal issues: Ms. Callie Roach, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590, (telephone) 202–366–2992, (email) *Callie.Roach@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

This ANPRM responds to Section 23011(c) of the BIL that directs the Secretary to complete research on side underride guards to better understand their overall effectiveness, and to assess the feasibility, benefits, and costs of, and any impacts on intermodal equipment, freight mobility, and freight capacity associated with, installing side underride guards on new trailers and semitrailers. The BIL further directs the Secretary to report the findings of the research in a **Federal Register** notice to seek public comment. NHTSA is also issuing this ANPRM in response to a petition for rulemaking from Ms. Karth and TSC (the Petitioners) to begin studies and rulemakings on side underride guards and front override guards on trucks. NHTSA initiated research on side underride guards following a March 2019 Government Accountability Office (GAO) recommendation to conduct additional research on side underride guards to better understand the overall effectiveness and cost associated with these guards.[1]

This ANPRM summarizes a 2022 NHTSA report that presents an analysis of the potential effects of a requirement for side underride guards on new trailers and semitrailers pursuant to Section 23011(c) of the BIL and the March 2019 GAO recommendation. The report, titled, ''Side Impact Guards for Combination Truck Trailers: Cost-Benefit Analysis,'' is referred to as the ''2022 NHTSA report'' in this ANPRM and is provided in the docket to this ANPRM.[2] The report details analyses of crash databases for estimating annual fatalities and serious injuries in side underride crashes and NHTSA's analysis of the benefits and costs of requiring trailers to be equipped with side underride guards to mitigate injuries and fatalities resulting from side underride crashes involving light passenger vehicles and trailers and semitrailers. This report provides a preliminary estimate that would inform any benefit-cost analysis that NHTSA would conduct under E.O. 12866 if the agency were to propose a new Federal Motor Vehicle Safety Standard (FMVSS) to require side underride guards on trailers and semi-trailers. NHTSA estimates that 17.2 lives would be saved and 69 serious injuries would be prevented annually when all trailers in the fleet are equipped with side underride guards. The discounted annual safety benefits when side underride guards are equipped on all applicable trailers and semitrailers are estimated to range from $129 million to $166 million at 3 and 7 percent discount rates. The total discounted annual cost (including lifetime fuel cost) of equipping new trailers and semitrailers with side underride guards is estimated to range between $970 million and $1.2 billion at 3 and 7 percent discount rates. The resulting cost per equivalent life saved is in the range of $73.5 million to $103.7 million.

The agency requests comments that would help NHTSA assess and make judgments on the benefits, costs, and other impacts of side underride guards to increase protection for occupants of passenger vehicles in crashes into the sides of trailers and semitrailers. This ANPRM summarizes NHTSA's research and requests comment on the accuracy of the estimated benefits, costs, and other impacts of requiring side underride guards on heavy trailers and semitrailers.

NHTSA requests comments on approaches to potentially mitigate or eliminate these horrific crashes given the disparity in vehicle size and crash outcome. Are there alternative engineering solutions to mitigate underride crashes into the sides of trailers? Are there non-regulatory actions that could be taken to decrease side underride crashes? Public comment, with supporting data or analysis, is sought for advanced technologies and design solutions to reduce deaths and serious injuries resulting from underride crashes into the sides of trailers.

[1] GAO Report to Congressional Requestors, ''Truck Underride Guards—Improved Data Collection, Inspections, and Research Needed,'' March 14, 2019, (GAO–19–264), *https://www.gao.gov/products/gao-19-264*.

[2] The report may be obtained by downloading it or by contacting Docket Management at the address or telephone number provided at the beginning of this document. Note that the report uses the term ''combination truck (CT)'' to mean ''tractor-trailer.''

II. Overview

a. Side Underride Guards

Underride crashes are those in which the front end of a vehicle impacts a generally larger vehicle and slides under the chassis of the impacted vehicle. Side underride may occur in collisions in which a passenger vehicle crashes into the side of a large trailer or semitrailer (referred to in this ANPRM collectively as ''trailers'') [3] because the trailer bed is higher than the hood of the passenger vehicle. In passenger compartment intrusion (PCI) crashes, the passenger vehicle underrides to the extent that the side of the struck vehicle intrudes into the passenger compartment. PCI crashes can result in passenger vehicle occupant injuries and fatalities caused by occupant contact with intruding components of the vehicle.

This ANPRM focuses on side underride guards on trailers to prevent a passenger vehicle from sliding under the trailer in the event of a collision. The guard must be strong enough to withstand the forces of the crash. Other side structures that are sometimes installed on trailers and semitrailers include aerodynamic skirts, which are designed for fuel efficiency, and ''lateral protection devices,'' which are intended to prevent pedestrians or cyclists from falling in front of the trailer's rear wheels. Aerodynamic skirts and lateral protection devices are generally not strong enough to prevent underride of a passenger vehicle in a crash. Internationally, side underride guards on trailers to prevent vehicle underride are not required by any country, though some countries have a requirement for lateral protection devices.

There are currently no Federal requirements for side underride guards on trailers. NHTSA specifies requirements for rear impact guards on trailers in Federal motor vehicle safety standards (FMVSSs) Nos. 223 and 224. FMVSS No. 223, an ''equipment standard,'' specifies performance requirements for rear impact guards on new trailers and semitrailers. FMVSS No. 224, a ''vehicle standard,'' requires most new trailers and semitrailers with a gross vehicle weight rating of 4,536 kilograms (kg) (10,000 pounds (lb)) or more to be equipped with a rear impact guard meeting FMVSS No. 223.

b. Petitions and Related Rulemakings

NHTSA received a petition for rulemaking from Ms. Marianne Karth and the Truck Safety Coalition (TSC) on

[3] A trailer or semitrailer is typically drawn by another motor vehicle referred to as a ''tractor''. The combination of the trailer and the tractor is referred to as a ''tractor-trailer'' in this ANPRM.

September 12, 2013, requesting that the agency increase the stringency and applicability of current requirements for rear impact (underride) guards and begin studies and rulemakings on side underride guards and front override guards on trucks. In response, NHTSA published an ANPRM on July 23, 2015, requesting comment on NHTSA's estimated costs and benefits of requiring rear impact guards and retroreflective tape on single unit trucks (SUTs).[4] Additionally, NHTSA published a notice of proposed rulemaking (NPRM) on December 16, 2015 to increase the stringency of the current rear impact guard requirements by aligning with Transport Canada's rear impact guard standard that ensures protection to passenger car occupants in 56 kilometers per hour (km/h) (35 miles per hour (mph)) impacts into the rear of trailers and semitrailers.[5] NHTSA completed this rulemaking by issuing a final rule on July 15, 2022 to upgrade FMVSS No. 223, ''Rear impact guards,'' and FMVSS No. 224, ''Rear impact protection,'' to improve occupant protection in crashes of passenger vehicles into the rear of trailers and semitrailers.[6]

Subsequent to the December 2015 NPRM, on February 4, 2021, Mr. Jerry Karth and Ms. Marianne Karth, along with 23 other signatories, submitted a ''Petition for Comprehensive Underride Supplemental Rulemaking'' requesting enhanced front, side, and rear underride protection on commercial motor vehicles. In response to the September 2013 and February 2021 petitions for rulemaking regarding requirements for side underride guards, this ANPRM seeks comment on NHTSA's estimated costs and benefits of requiring side underride guards on new trailers and semitrailers.

c. Bipartisan Infrastructure Law

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA), commonly referred to as the Bipartisan Infrastructure Law (BIL).[7] Section 23011 of the BIL specifies provisions for underride protection measures for trailers and semitrailers. As discussed in detail below, the provisions direct the Secretary to conduct additional research on side underride guards.

Section 23011(c)(1)(A) of the BIL directs the Secretary to complete, not later than 1 year after enactment of the Act, additional research on side underride guards to better understand the overall effectiveness of the guards. Section 23011(c)(1)(B) requires the Secretary to assess, among other matters, the feasibility, benefits, and costs of, and any impacts on intermodal equipment, freight mobility (including port operations), and freight capacity associated with, installing side underride guards on new trailers and semitrailers with a gross vehicle weight rating (GVWR) of 10,000 pounds or more. Section 23011(c)(1)(C) requires consideration of the unique structural and operational aspects of intermodal chassis and pole trailers. Section 23011(c)(1)(D) directs the Secretary to develop performance standards for side underride guards, if warranted.

Section 23011(c)(3) of the BIL directs the Secretary to publish the results of the side underride guard assessment specified in Section 23011(c)(1)(B) within 90 days of completion of the assessment and provide an opportunity for public comment. Section 23011(c)(4) then directs that, within 90 days from the date the comment period closes, the Secretary shall submit a report to Congress on the assessment results, a summary of comments received, and a determination whether the Secretary intends to develop performance requirements for side underride guards, including any analysis that led to that determination.

d. GAO Recommendation

In March 2019, the Government Accountability Office (GAO) published a Report to Congressional Requesters on Truck Underride Guards.[8] Based on the findings of this report, GAO recommended that the Department of Transportation (DOT) take steps to provide a standardized definition of underride crashes and data fields, share information with police departments on identifying underride crashes, establish annual inspection requirements for rear impact guards, and conduct additional research on side underride guards. Specifically, regarding the research, recommendation 4 of the report stated that ''The Administrator of the National Highway Traffic Safety Administration should conduct additional research on side underride guards to better understand the overall effectiveness and cost associated with these guards and, if warranted, develop standards for their implementation.'' The Department of Transportation (DOT) concurred with this recommendation.

e. Purpose of This ANPRM

In this ANPRM, the agency discusses the research and analysis of side underride crashes detailed in its 2022 report and the potential effects of a requirement for side underride guards on new trailers, and requests comments on the information presented. The agency seeks information that would help NHTSA assess and make judgments on the benefits, costs, and other impacts of side underride guards to increase protection for occupants of passenger vehicles in crashes into the sides of trailers.

III. Research, Benefits, and Costs

This section summarizes the analyses of crash data and estimates of benefits, costs, and cost effectiveness of a requirement for side underride guards on new trailers that is detailed in the 2022 NHTSA report pursuant to Section 23011(c) of the BIL and the March 2019 GAO recommendation.

a. Crash Data

In order to estimate annual fatalities and injuries associated with side underride crashes, NHTSA analyzed crash data involving light passenger vehicles[9] and tractor-trailers. The analysis focused on crashes in which the tractor-trailer received damage to the side or undercarriage and the passenger vehicle received damage to the front or top of the vehicle. In other words, the analysis considered side impact, sideswipe, and angled crashes between the two vehicles.

Data sources for this analysis included the Fatality Analysis Reporting System (FARS) 2008–2017, National Automotive Sampling System General Estimates System (GES) 2008–2015, National Automotive Sampling System Crashworthiness Data System (NASS–CDS) 2006–2015, and Crash Report Sampling System (CRSS) 2016–2017.[10] NHTSA used 2008–2017 FARS data to identify fatal crashes involving passenger vehicles and the sides of trailers. GES data from 2011 to 2015 and CRSS data from 2016 and 2017 provided the general patterns of occupant injuries in crashes of passenger vehicles with the sides of trailers. NASS–CDS data from 2006 to 2015 were used to estimate the relative velocity distributions associated with occupant injury severities in side underride crashes. The

[4] 80 FR 43663, RIN 2127–AL57.

[5] 80 FR 78418, RIN 2127–AL58.

[6] 87 FR 42339, RIN 2127–AL58.

[7] *https://www.congress.gov/bill/117th-congress/house-bill/3684/text.*

[8] GAO Report to Congressional Requestors, ''Truck Underride Guards—Improved Data Collection, Inspections, and Research Needed,'' March 14, 2019, (GAO–19–264), *https://www.gao.gov/products/gao-19-264*.

[9] Light passenger vehicles include passenger cars, light trucks, and vans with gross vehicle weight ratings (GVWRs) of 10,000 pounds or less.

[10] Information on NHTSA's databases are available at Crash Data Systems | NHTSA.

effects of other crash factors on the number of fatalities and effectiveness of side underride guards were also considered in the analysis. In addition, the agency reviewed documents cited by the Petitioners in the context of side underride crashes for additional information.

To develop a better understanding of vehicle underride into the side of tractor-trailers, NHTSA conducted a review of Police Crash Reports (PCRs) of all two-vehicle crashes involving a light vehicle crashing into the side of a tractor-trailer in 2017 FARS. In addition to the coded elements in the PCR, the review included the crash narrative, interviews, scene diagrams, and photographs. The PCR review provided details to determine the impact location on the tractor-trailer, whether underride and/or PCI of the light passenger vehicle occurred, whether the impact speed was less than or equal to 64 km/h (40 mph), and whether side underride guards located between front and rear trailer wheels would have mitigated fatalities and injuries. For cases with insufficient information to determine underride, the agency conducted further investigations to obtain crash and vehicle damage details. Of the 184 PCRs reviewed in the 2017 FARS data files, NHTSA determined that 92 crashes of a light passenger vehicle into the side of tractor-trailers involved underride while FARS reported only 52 crashes with underride. NHTSA also determined that among the 184 cases, 105 light passenger vehicle fatalities occurred in crashes with underride while FARS reported only 59 fatalities in crashes with underride. Based on this information, NHTSA estimated that the actual number of fatalities associated with side underride was 78 percent higher than reported in FARS (= 105/59 − 1). As noted in the 2019 GAO report on underride, previous evaluations of underride data have indicated that vehicle underride is underreported in FARS. The PCR review provided a best estimate of the current underreporting of side underride crashes in the FARS data files. The agency's analysis of side underride crashes therefore adjusts for the level of underreporting in FARS.

To obtain a more accurate estimate of fatalities associated with side underride crashes, NHTSA considered the extent of underreporting of side underride crash fatalities determined from the detailed review of PCRs of front-to-side crashes of a passenger vehicle and a tractor-trailer identified in the 2017 FARS data together with results from an analysis of the 2008–2017 FARS data files. Analysis of the FARS data revealed that the annual average number of light passenger vehicle occupant fatalities in crashes with the sides of tractor-trailers was 212, of which 50 fatalities (about 24 percent) were attributed to side underride crashes. NHTSA estimated, taking into account the 78 percent greater number of underride fatalities than that reported in FARS, that on an annual average, there are 89 (= 50 × 1.78) light passenger vehicle occupant fatalities in two-vehicle crashes with tractor-trailers (trailer along with the vehicle with motive power drawing the trailer or semitrailer) where a light passenger vehicle strikes the side of a tractor-trailer and underrides it.

From the analysis of NASS–GES 2011–2015 and the CRSS 2016–2017 data files, NHTSA estimated there are 230 serious injuries to light passenger vehicle occupants in underride crashes into the side of trailers. After applying the estimated 78 percent greater number of side underride fatalities than that in NHTSA databases to serious injuries, we estimate an average of 409 (= 230 × 1.78) serious injuries to light passenger vehicle occupants in underride crashes into the side of trailers annually.

The agency reviewed additional documents cited by the Petitioners in the context of side underride crashes. In a 2012 paper, Brumbelow used the Trucks in Fatal Accidents (TIFA) [11] data files for the three-year period from 2006 to 2008 and estimated that on an annual average, there are 530 passenger vehicle occupant fatalities in two-vehicle crashes involving a passenger vehicle impacting the side of a truck.[12] Brumbelow noted that 20 percent of the side-impacted trucks were straight trucks and the remaining were tractor-trailers or tractors without trailers. Brumbelow also noted that TIFA did not provide information on the impact location (impact with tractor, between tractor and trailer, between front and rear axles of the trailer, or behind the trailer rear wheels), and that not all of the fatalities and injuries in the crashes were due to underride. In a 2017 news release, IIHS stated that in 2015, 301 passenger vehicle occupants were killed in two-vehicle crashes involving a passenger vehicle impacting the side of a tractor-trailer.[13] [14] Additional information on the data source and the percentage of crashes with underride was not provided in this 2017 news release. Since the data in these two documents cited by the petitioners are not specific to vehicle underride, the data could not be used to estimate fatalities or injuries in crashes involving vehicle underride.

NHTSA used the available crash data along with the detailed PCR reviews to account for any underreporting of side underrides and associated fatalities. The data sources used form the most comprehensive set available to determine the number of fatalities and serious injuries to light vehicle occupants in side underride crashes with trailers and semitrailers. This ANPRM seeks comment on whether additional data sources provide information about the frequency of side underride crashes, injuries, and fatalities or whether the data sources on which NHTSA relied could be improved.

b. Side Underride Guard Effectiveness

Side underride guards are not currently required on trailers by any country. At the time of this analysis, the agency is aware of only one side underride guard system intended to mitigate side underrides and PCI that has been crash tested by a third party and is available for installation on trailers in the United States. The AngelWing guard, manufactured by AirFlow Deflector, is largely constructed of steel and has an off-the-shelf weight of 450 to 800 pounds depending on the specific configuration.[15] In 2017, the IIHS tested the AngelWing side underride guard. In the first evaluation, a midsize sedan struck the side of a trailer at 56 km/h (35 mph). The first crash was conducted with only an aerodynamic fiberglass side skirt on the trailer and resulted in vehicle underride. In the second crash, the trailer had the AngelWing device installed; the guard bent in the crash but the sedan did not underride the trailer. Another crash test was conducted by IIHS later in 2017 at 64 km/h (40 mph) with similar results.

Side underride guard designs that have not been finalized, tested, and

[11] TIFA contains records for all medium and heavy trucks that were involved in fatal traffic crashes in the 50 States of the United States and the District of Columbia for the years 1980 to 2010. The TIFA database provides additional detail beyond that in the FARS data files. Trucks in Fatal Accidents (TIFA) and Buses in Fatal Accidents (BIFA) | National Highway Traffic Safety Administration (NHTSA).

[12] Matthew L. Brumbelow (2012) Potential Benefits of Underride Guards in Large Truck Side Crashes, Traffic Injury Prevention, 13:6, 592–599, DOI: 10.1080/15389588.2012.666595.

[13] IIHS News Release, ''IIHS crash tests reveal benefits of underride guards for the sides of semitrailers,'' 2017.

[14] IIHS also cited requirements in some U.S. cities for ''side guards on city-owned and/or contracted trucks.'' However, these are lateral protection devices for protecting pedestrian and bicyclists, and are unlikely to prevent vehicle underride.

[15] AirFlow Deflector, *https://airflowdeflector.com/*.

made available for purchase and installation on trailers have not been included in this analysis of guard costs and benefits because information needed for conducting the analysis are not available for these designs. For example, a ''lateral protection system'' made by Canadian firm PHSS Fortier for trailers in the United States was not included because test results, pricing information, and effectiveness data are unavailable.[16] NHTSA requests information on side underride guards that have been fully developed and tested and are currently available for installation on trailers in the United States.

From the PCR review of 184 relevant cases in the 2017 FARS data files, NHTSA estimated that 19.9 percent of side underride fatalities occurred at impact speeds below 64 km/h (40 mph). For evaluating the benefits of side underride guards, the subset of crashes at impact speeds below 64 km/h (40 mph) are relevant because 64 km/h (40 mph) is the maximum impact speed at which the existing side underride guard considered in this analysis have demonstrated passenger vehicle occupant protection.[17]

To estimate the effect of a side underride guard requirement on safety outcomes, we need an estimate of the effectiveness of side underride guards on trailers in mitigating fatalities and serious injuries. Based on NHTSA's PCR review and the available AngelWing side guard test data, NHTSA assumed (1) side underrides occur where a side guard would be located (between the fifth wheel/kingpin and rear axles), and (2) a zero-percent failure rate of side guards in preventing underride for vehicles that strike the side guards at impact speeds of 64 km/h (40 mph) or less. The agency also estimated the latent risk of fatality and serious injury when a side guard successfully transforms what would have been an underride into a frontal collision using a NHTSA analysis of fatality risk in frontal collisions as a function of change in velocity.[18] Taking into account seat belt use along with the latent risk of fatality, the agency estimated a 3 percent fatality risk in mitigated side underrides. Subtracting this estimated fatality risk in mitigated side underrides yields a 97 percent effectiveness of side underride guards in mitigating fatalities in underride crashes into the side of trailers at impact speeds 64 km/h (40 mph) or less. A similar process was used for estimating the effectiveness of side underride guards in mitigating serious injuries. NHTSA estimated 85 percent effectiveness of side underride guards in mitigating serious injuries in underride crashes into the side of trailers at impact speeds 64 km/h (40 mph) or less. Details of the methods used for estimating effectiveness of side underride guards are provided in the 2022 NHTSA report.

c. Benefits

Section 6 of Executive Order 12866 directs NHTSA to conduct a benefit/cost analysis of any proposed regulatory requirements.

NHTSA estimated the benefits of equipping trailers with side underride guards by first calculating the total number of fatalities and serious injuries avoided if all trailers were equipped with side underride guards.

NHTSA estimated that there are annually 89 light vehicle occupant fatalities and 409 serious injuries in two-vehicle crashes with tractor-trailers where a light passenger vehicle strikes the side of a tractor-trailer and underrides it. This estimate accounts for the 78 percent higher number of underride fatalities than that in NHTSA's crash databases. Since only 19.9 percent of side underride crashes are at impact speed 64 km/h (40 mph) or less for which side underride guards would be effective, NHTSA estimates the target population for side underride guards as 17.7 (= 89×0.199) fatalities and 81 (= 409×0.199) serious injuries. Using side underride guard effectiveness of 97 percent for mitigating fatalities in crashes with impact speeds less than or equal to 64 km/h and 85 percent for mitigating serious injuries, NHTSA estimated that 17.2 (= 17.7×0.97) lives would be saved and 69 (= 81×0.85) serious injuries would be prevented annually when all trailers in the fleet are equipped with side underride guards.

NHTSA uses a ''value of statistical life'' (VSL) to monetize benefits of lives saved and injuries prevented by regulations. The VSL for NHTSA's analysis is based on the 2021 Department of Transportation Guidance on Valuation of a Statistical Life in Economic Analysis,[19] with a VSL of $11.9 million in 2020 dollars. NHTSA's analysis incorporates components of the economic costs of fatalities and injuries, including medical, EMS, market productivity, household productivity, insurance administration, workplace, legal, congestion, travel delay, and the nontangible value of physical pain and loss of quality of life (*i.e.,* quality adjusted life years, QALYs).[20] NHTSA's analysis applies the same process to estimate the economic costs of serious injuries associated with side underride crashes. Using these comprehensive costs of fatalities and injuries, NHTSA estimated that the discounted lifetime safety benefits in 2020 dollars when side underride guards are equipped on all applicable trailers and semitrailers would be $165.9 million at a 3 percent discount rate and $128.5 million at a 7 percent discount rate. This represents a benefit of approximately $640 per trailer or semitrailer at a 3-percent discount rate ($490 per trailer or semitrailer at a 7% discount rate).

These estimates do not account for the potential effects of advanced driver assistance technologies (ADAS) such as automatic emergency braking, blind spot detection, and lane keeping technologies, which could reduce the number of crashes even without the presence of underride guards. ADAS is expected to help mitigate underrides by preventing collisions and mitigating impact speeds, which would reduce the number of fatalities and serious injuries relevant to this analysis, but NHTSA does not have sufficient data to account for this effect. Additionally, because side underride occurs predominantly at impact speeds above 40 mph, protective effects from ADAS above 40 mph could generate a large increase in the safety benefits. However, we do not have information available on the degree to which side underride guards may offer passenger vehicle occupant protection above the test speed of 40 mph. The agency requests data on additional factors that affect the estimated benefits of side underride guards on trailers and semitrailers.

d. Costs

NHTSA used the existing AngelWing system as the basis for the price, weight, and installation costs of side underride guards on trailers. Initial hardware cost for the AngelWing was listed at $2,897

[16] The system comprises multiple vinyl belts and weighs approximately 540 pounds (245 kg). The system is designed to function as a side underride guard, aerodynamic skirt, and pedestrian/cyclist guard. It reportedly has been tested by PHSS Fortier at impact speeds up to 35 mph. *https://protectionlaterale.ca/en/our-product-lateral-protection/.*

[17] AngelWing side guard tested by the Insurance Institute for Highway Safety (IIHS) mitigated underride of light passenger vehicles in crashes into the side of trailers at impact speeds up to 64 km/h (40 mph). *https://airflowdeflector.com/angelwing_underride-1/.*

[18] Wang, J.-S. (2021). *MAIS (05/08) Injury Probability Curves as Functions of Delta-V.* Washington, DC: National Highway Traffic Safety Administration.

[19] Departmental Guidance on Valuation of a Statistical Life in Economic Analysis | US Department of Transportation.

[20] The comprehensive economic costs of injury are detailed in the 2022 NHTSA Report.

per trailer at the time of data collection. We acknowledge that broad adoption of side underride guards would likely lead to considerable changes in the market, and thus it is feasible that the market would experience downward price pressure due to increasing returns to scale and competition from other potential suppliers. However, we do not have sufficient information to project the impact on prices, and thus apply the unadjusted price for this analysis. Installation is stated to require fewer than two hours for two people. We assumed an average of 1.5 hours per person per trailer. With two people, we estimate 3 labor hours per trailer at $31 per hour [21] for a total labor cost of $93 per trailer. The average total cost of installing side underride guards on a trailer, including hardware and labor, was therefore estimated to be $2,990 in 2020 dollars.

We estimate that a requirement for side underride guard would apply to 260,000 new trailers and semitrailers sold annually. Given these figures, the total annual initial cost for equipping all applicable new trailers with side underride guards would be approximately $778 million. This cost estimate does not include any additional costs associated with reinforcing trailers to accommodate the side underride guards and any associated changes to trailer loading patterns. We acknowledge that such costs would add to total hardware, installation, and operating costs. However, we do not have sufficient information available to estimate these additional costs.

We also calculated lifetime incremental fuel costs for applicable trailers in the fleet subject to a side underride guard requirement. With an estimated ratio of one Class 8 truck per two trailers, the equivalent of 130,000 trucks would carry new trailers equipped with side underride guards. We assumed that 40 percent of all applicable new trailers would be equipped with aerodynamic side skirts, which reduce per-mile fuel costs. With a weight increase of 450 to 800 pounds per trailer, requiring side underride guards is estimated to increase lifetime fuel costs for new trailers entering the fleet each year by approximately $250 million to $430 million at a 3 percent discount rate, and approximately $200 million to $340 million at a 7% discount rate. Incremental fuel costs represent between approximately one-fourth and two-fifths of estimated total costs, depending on the side underride guard weight and the discount rate.

Under a side underride guard requirement, total annual costs for new trailers were estimated to increase by $1.02 billion to $1.20 billion at a 3 percent discount rate, and $970 million to $1.12 billion at a 7 percent discount rate, depending on the weight of the guards. The cost per trailer would be approximately $3,930 to $4,630 at a 3-percent discount rate, and $3,740 to $4,300 at a 7% discount rate. We assumed that the annual sales of trailers and semitrailers would remain the same in the future, and consequently the annual cost of equipping new trailers with side underride guards and the discounted lifetime fuel costs remain the same in future years.

These estimated cost impacts do not include additional costs that accrue due to incremental wear and tear on equipped trailers. Side underride guards may impose non-uniform loads on trailer floors, adding stresses that decrease trailer lifetimes in the absence of repair. It is possible that side underride guards would obstruct proper safety inspections of the underside of the trailer. They may also strike or entangle with road structures and loading area components, leading to additional repair costs or restricted access to destinations. Another unquantified cost could result from restrictions on trailer axle configurations. The rear axles of trailers are commonly able to be moved fore and aft to adjust to loading conditions; losing this capability would add to operating costs. We seek comment on these potential effects of installing side underride guards. Furthermore, the estimated costs do not include any potential effects of side underride guards on port and loading dock operations and freight capacity, and on increased greenhouse gases and other pollutants resulting from increased fuel consumption. We seek comment on the practicability and feasibility of side underride guards regarding intermodal operations and effects of side underride guards on intermodal equipment, freight mobility, freight capacity, and port operations.

e. Net Benefits and Cost Effectiveness

The estimated benefits and costs discussed in the preceding sections were used to calculate the net benefits for a side underride guard requirement on trailers and semitrailers. The estimated annual benefits, costs, and net benefits are summarized in Table 1. The benefits and costs were also used to estimate the cost effectiveness (cost per equivalent life saved). These values are summarized in Table 2.

TABLE 1—ESTIMATE OF ANNUAL TOTAL BENEFITS, TOTAL COSTS, AND NET BENEFITS

[Equipping 260,000 eligible new CT trailers with side underride guards, in millions of 2020 dollars]

Scenario	3% Discount rate	7% Discount rate
Total Benefits:		
Central Case	$165.9	$128.5
Total Costs:		
Low Cost Estimate: 450-Pound Side Guard Weight	1,022.5	972.7
High Cost Estimate: 800-Pound Side Guard Weight	1,203.8	1,117.2
Net Benefits (total benefits less total costs):		
Low Cost Estimate, Central Case	−856.7	−844.2
High Cost Estimate, Central Case	−1,037.9	−988.7

[21] Estimates from the Bureau of Labor Statistics for an automotive repair worker.

TABLE 2—ESTIMATED COST PER EQUIVALENT LIFE SAVED

[in millions of 2020 dollars]

Scenario	3% Discount rate	7% Discount rate
Low Cost Estimate, Central Case	$73.5	$90.3
High Cost Estimate, Central Case	86.6	103.7

f. Sensitivity Analysis

NHTSA also conducted a sensitivity analysis to consider the effects of changes in cost assumptions and the effects of a larger target population using the upper-bound underreporting factor from the FARS–PCR analysis. The analytical inputs specified above in subsections a. through e. (*e.g.,* underreporting rate, hardware cost, vehicle miles traveled) are the best representations of these values NHTSA could develop based on available information and that set of inputs is referred to as the ''central case.'' There is uncertainty in the analytical inputs, however. In the sensitivity analysis, we explored alternative values to identify the extent to which the relationship between benefits and costs associated with a side underride guard requirement changed as the inputs changed.

NHTSA estimated 78 percent higher number of side underride fatalities than that reported in FARS. Increasing the percent higher number of side underride fatalities to that reported in FARS to 155 percent [22] yields lifetime safety benefits of approximately $185 million to $240 million, at a 7 percent and 3 percent discount rate, respectively.

In the central case, we used a hardware cost equal to the assumed baseline price for the AngelWing system. A 20 percent reduction in the cost would reduce annual hardware costs by an estimated $151 million to $603 million. With no assumed change in installation costs, the total annual hardware and installation cost would be an estimated $627 million, versus $778 million in the central case.

We also considered a sensitivity case in which the trailer vehicle miles traveled (VMT) increased by five percent due to capacity and operational constraints under a side underride guard requirement.[23] The additional fuel cost impacts involve the incremental costs of carrying all trailer weight (the original trailer weight plus the side underride guard weight) across the five percent increment of VMT. The resulting estimated incremental fuel costs dominate all other impact measures in both the central analysis and the sensitivity analysis; a 5 percent increase in VMT would result in increased lifetime fuel costs of approximately $2.0 to $2.5 billion at a 7 percent and 3 percent discount rate, respectively.

With the estimates above, we were able to examine a variety of sensitivity cases. In all sensitivity cases, as in the analysis of the central case presented in subsection a. through e., the net benefits of a side underride guard requirement for all new trailers remain negative. In the best-case scenario (*i.e.,* 155 percent greater number of fatalities than that reported in FARS and 20 percent lower hardware costs), the lifetime net benefits are still negative (approximately −$630 to −$640 million at a 3 percent and 7 percent discount rate, respectively). We seek comment on other factors that could affect the estimated net benefits of mandating side underride guards on trailers.

g. Summary of Analysis

The analysis discussed in this document indicates that equipping all new trailers with side underride guards would reduce the number of fatalities and serious injuries for passenger vehicle occupants associated with side underride crashes into trailers. Equipping a new trailer with side underride guards is estimated to generate approximately $640 in lifetime discounted safety benefits at a 3 percent discount rate under the central range of assumptions evaluated, or approximately $490 per trailer at a 7 percent discount rate. The total discounted lifetime costs of equipping new trailers with side underride guards are estimated to be approximately $3,930 to $4,630 per trailer at a 3 percent discount rate, or approximately $3,740 to $4,300 per trailer at a 7 percent discount rate. On a per trailer basis, the total discounted lifetime costs of equipping new trailers and semitrailers with side underride guards is six to eight times the corresponding estimated safety benefits. The net benefits for a side underride guard requirement on trailers and semitrailers are estimated to be in the range of $844 million to $1,038 million. The cost per equivalent life saved is estimated to be in the range of $73.5 million to $103.7 million.

The analysis considered a range of input assumptions to account for uncertainty in the size of the target population, hardware costs, and fuel consumption impacts. The target population of fatalities and serious injuries could increase if: (1) the baseline level of relevant fatalities and serious injuries is much larger than estimated; or (2) side underride guards provided some protection to passenger vehicle occupants at impact speeds above 40 mph. The PCR review offered a thorough analysis of one year's crashes and established a meaningful estimate of the rate of side underride underreporting in FARS. By basing our estimated target population on the underreporting rate from the PCR review, we are confident that we have represented the target population accurately. Side underride occurs predominantly at impact speeds above 40 mph, so protective effects above 40 mph could generate a large incremental improvement above the safety benefits estimated in this analysis. However, we do not have data available on the degree to which side underride guards may offer passenger vehicle occupant protection at impact speeds above 40 mph.

The results of this study reflect existing side underride guard designs. It is possible that future designs may: mitigate side underride at higher speeds (increasing safety benefits); have lower hardware costs (reducing costs); or weigh less (reducing costs). There are also unquantified factors that would be expected to reduce net benefits. The safety benefits may be smaller than estimated due to decreases in crash risks associated with ADAS, leading to a smaller baseline level of side underride fatalities and serious injuries. Cost impacts may also be larger than estimated due to increased VMT. However, we do not have any data to support modified characteristics in place of our baseline assumptions.

[22] The 155 percent is an upper bound of the higher number of underride crash fatalities than that reported in FARS identified in NHTSA's PCR review for crash speeds below 40 mph.

[23] The additional weight of side underride guards could potentially reduce cargo capacity due to weight limitations and shift some cargo to new truck trips that would not otherwise have taken place, leading to higher VMT and greater operational costs.

The analysis did not include any effects of side underride guards on port and loading dock operations and freight capacity. It did not take into consideration modifications to infrastructure, maintenance and practicability and feasibility of intermodal operations for trailers equipped with side underride guards.

IV. Request for Comment

NHTSA requests comments that would help the agency assess and make judgments on the benefits, costs, and other impacts of requiring side underride guards on trailers. In providing a comment on a particular matter or in responding to a particular question, interested persons are asked to provide any relevant factual information to support their opinions, including, but not limited to, statistical and cost data and the source of such information. For easy reference, the questions below are numbered consecutively.

1. The injury target population was obtained by reviewing crash data and estimating side underride underreporting in FARS through PCR reviews. We seek comment on the estimated injury target population resulting from underride crashes with PCI into the side of trailers.

2. The agency assumed side underride guard effectiveness of 97 percent for fatalities and 85 percent for serious injuries in light vehicle crashes with PCI into the sides of trailers at speeds up to 40 mph. We seek comment on this effectiveness estimate.

3. In estimating benefits, the agency assumed that side impact guards would mitigate fatalities and injuries in light vehicle impacts with PCI into the sides of trailers at impact speeds up to 40 mph. We recognize, however, that benefits may accrue from underride crashes at speeds higher than 40 mph. We seek information on quantifying possible benefits of side impact guards in crashes at speeds above 40 mph.

4. Are there other benefits that NHTSA has not considered that could be used to justify a mandate for side underride guards? The agency seeks information and supporting rationale concerning these additional benefits of side underride guards.

5. In estimating benefits, NHTSA did not account for the potential effects of advanced driver assistance technologies (ADAS) which could reduce the number of crashes independently of the presence of underride guards. The agency requests data on additional factors that affect the estimated benefits of side underride guards on trailers and semitrailers.

6. In estimating costs, the agency did not include the cost and weight of strengthening the beams, frame rails, and floor of the trailer to accommodate side underride guards. NHTSA seeks information on changes that would be required and the additional costs resulting from these changes.

7. NHTSA's cost estimates were based on the AngelWing side underride guard manufactured by Airflow Deflector. NHTSA seeks relevant information on side underride guards that have been fully developed and tested and are currently available for installation on trailers in the United States.

8. NHTSA did not take into consideration the practicability and feasibility of side underride guards on trailer and semitrailer operations. Could side underride guards scrape or snag on the road surface when the vehicle travels over humped surfaces such as a highway-rail crossing, or when the vehicle enters a steep loading dock ramp? Could this interaction of side underride guards with the ground disable movement of the trailer and significantly damage the side underride guards, thereby requiring their replacement? We seek information on the effects of side underride guards on trailer and semitrailer operations.

9. The analysis did not account for the effects of side underride guards on port and loading dock operations and freight capacity, and the practicability and feasibility of side underride guards in intermodal operations. We seek information on the effects of side underride guards on intermodal operations.

V. Rulemaking Analyses

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

The agency has considered the impact of this ANPRM under Executive Orders (E.O.) 12866 and 13563 and the Department of Transportation's regulatory policies and procedures. In this ANPRM, the agency requests comments that would help NHTSA assess and make judgments on the benefits, costs and other impacts, of strategies that increase the crash protection to occupants of vehicles crashing into the side of trailers and semi-trailers. Strategies discussed in this ANPRM are possible requirements for the installation of side underride guards on new trailers and semitrailers. This ANPRM is significant under E.O. 12866 and was reviewed by the Office of Management and Budget.

The agency has made preliminary estimates of the costs and benefits of the above strategy. Equipping a new trailer with side underride guards is estimated to generate approximately $640 in lifetime discounted safety benefits at a 3 percent discount rate under the central range of assumptions evaluated, or approximately $490 per trailer at a 7 percent discount rate. The total discounted lifetime costs of equipping new trailers and semitrailers with side underride guards are estimated to be approximately $3,930 to $4,630 per trailer at a 3 percent discount rate, or approximately $3,740 to $4,300 per trailer at a 7 percent discount rate. The net benefits for a side underride guard requirement on trailers and semitrailers are estimated to be in the range of −$844 million to −$1,038 million. The cost per equivalent life saved is estimated to be in the range of $73.5 million to $103.7 million.

NHTSA requests comments on these estimates. Information from the commenters will help the agency further evaluate the course of action NHTSA should pursue in this rulemaking on side underride guards.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This ANPRM would not establish any new information collection requirements.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the document clearly stated?
- Does the document contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the document easier to understand?

• Would more (but shorter) sections be better?
• Could we improve clarity by adding tables, lists, or diagrams?
• What else could we do to make the document easier to understand?

If you have any responses to these questions, please include them in your comments.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

VI. Submission of Comments

How can I influence NHTSA's thinking on this rulemaking?

In developing this ANPRM, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rulemaking. We invite you to provide different views on options we discuss, new approaches we have not considered, new data, descriptions of how this ANPRM may affect you, or other relevant information. We welcome your views on all aspects of this ANPRM, but request comments on specific issues throughout this document. Your comments will be most effective if you follow the suggestions below:

—Explain your views and reasoning as clearly as possible.
—Provide solid technical and cost data to support your views.
—If you estimate potential costs, explain how you arrived at the estimate.
—Tell us which parts of the ANPRM you support, as well as those with which you disagree.
—Provide specific examples to illustrate your concerns.
—Offer specific alternatives.
—Refer your comments to specific sections of the ANPRM, such as the units or page numbers of the preamble.

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments to the docket electronically by logging onto *http://www.regulations.gov* or by the means given in the **ADDRESSES** section at the beginning of this document.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.*

How do I submit confidential business information?

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by 49 CFR part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact him for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, Appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket.

Will the agency consider late comments?

We will consider all comments that the docket receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider it in developing the next step in this rulemaking, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under **ADDRESSES**. You may also see the comments on the internet (*http://regulations.gov*).

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2023–08451 Filed 4–20–23; 8:45 am]

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Notices

Federal Register
Vol. 88, No. 77
Friday, April 21, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–23–CF–0003]

Community Facilities Technical Assistance and Training Grant Program for Fiscal Year 2023

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of Funding of Availability (NOFA).

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announces that it is accepting applications under the Community Facilities Technical Assistance and Training (TAT) Grant Program for fiscal year (FY) 2023. The FY 2023 funding amount is $1,265,000.

DATES: Complete applications for grants must be submitted according to the following deadlines:

Paper submissions: Paper submissions must be received by the Agency no later than 4:00 p.m. local time on June 20, 2023 to be eligible for funding under this grant opportunity. Late or incomplete applications will not be eligible for funding.

Electronic submissions: Electronic submissions must be received no later than June 30, 2023 to be eligible for funding under this grant opportunity. Late or incomplete applications will not be eligible for funding. Electronic applications must be submitted via *https://www.Grants.gov* by 11:59 p.m. Eastern Time on June 15, 2023.

ADDRESSES: This funding announcement will be announced on *www.Grants.gov.* Paper applications must be submitted to the USDA Rural Development State Office (RDSO) for the State where the Project is located. For Projects involving multiple states, the application must be filed in the RDSO where the Applicant is located. Applicants are encouraged to contact their respective RDSO for an email contact to submit an application prior to the submission deadline date. Applicants may also request paper application packages from their respective RDSO. A list of the USDA RDSO contacts can be found at: *https://www.rd.usda.gov/about-rd/state-offices.*

Entities wishing to apply for assistance may download the application documents and requirements delineated in this notice from: *https://www.Grants.gov.* Application information for electronic submissions may be found at *http://www.Grants.gov.*

FOR FURTHER INFORMATION CONTACT: Nathan Chitwood, Asset Risk Management Specialist at email address *nathan.chitwood@usda.gov,* United States Department of Agriculture, Rural Development, Business Loop 70 West, Suite 235, Columbia, MO 65203; or call; Telephone: 573–876–0965. For further information on submitting program applications under this notice, please contact the USDA RDSO in the state where the applicant's headquarters is located. A list of RDSO contacts is provided at the following link: *https://www.rd.usda.gov/about-rd/state-offices.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Housing Service (RHS).

Funding Opportunity Title: Community Facilities Technical Assistance and Training Grant.

Announcement Type: Notice of Funding of Availability (NOFA).

Funding Opportunity Number: USDA–RD–CFTAT–2023.

Assistance Listing: 10.766.

Dates: Applications must be submitted using one of the following methods:

- *Paper submissions:* The deadline for receipt of a paper application is 4 p.m. local time, June 20, 2023. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and postage due applications will not be accepted.
- *Electronic submissions:* Electronic applications will be accepted via *Grants.gov.* The deadline for receipt of an electronic application via *Grants.gov* is 11:59 p.m. Eastern Daylight Saving Time on June 15, 2023. The application dates and times are firm. The Agency will not consider any application received after the deadline.

Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to June 12, 2023. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

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

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

For further information, visit *https://www.rd.usda.gov/priority-points.*

A. Program Description

1. *Purpose of the Program.* The purpose of the Community Facilities Technical Assistance and Training (TAT) Grant Program is to provide technical assistance and training with respect to essential community facilities programs. To meet this purpose, the Agency will make grants to public bodies and private nonprofit corporations, (such as States, counties, cities, townships, and incorporated towns and villages, boroughs, authorities, districts, and Indian tribes on Federal and State reservations) to provide assistance and/or training with respect to essential community facilities

programs. The Technical Assistance and/or training will assist communities, Indian tribes, and nonprofit corporations to identify and plan for community facility needs that exist in their area. Once those needs have been identified, the Grantee can assist in identifying public and private resources to finance those identified community facility needs.

2. *Statutory and Regulatory Authority.* This NOFA is authorized pursuant to Division N—Disaster Relief Supplemental Appropriations Act, 2023 of the Consolidated Appropriations Act, 2023, (Pub. L. 117–328); section 306(a)(26) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(26)); and implemented under 7 CFR part 3570 subpart F.

3. *Definitions.* The definitions and abbreviations applicable to this Notice are published at 7 CFR 3570.252 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XXXV/part-3570/subpart-F/section-3570.252*).

4. *Application of Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on the provisions found in 7 CFR part 3570, subpart F, and as indicated in this notice.

5. The requirements for submitting an application can be found at 7 CFR 3570.267 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XXXV/part-3570/subpart-F/section-3570.267*). All applicants can access application materials at *https://www.Grants.gov.* Applications must be received by the Agency by the due date listed in the **DATES** section of this Notice. Applications received after that due date will not be considered for funding. Paper copies of the applications must be submitted to the RDSO in which the applicant is headquartered. Electronic submissions must be submitted at *https://www.Grants.gov.* A listing of the RDSO contacts may be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* Applicants whose headquarters are in the District of Columbia will submit their application to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Washington, DC 20250. Both paper and electronic applications must be received by the Agency by the deadlines stated in the **DATES** section of this Notice. The use of a courier and package tracking for paper applications is strongly encouraged. An applicant can only submit one application for funding. Application information for electronic submissions may be found at *https://www.Grants.gov.* Applications will not be accepted via FAX or email.

6. The Agency advises all interested parties that the applicant bears the burden in preparing and submitting an application in response to this notice whether or not the applicant receives any funding as a result of its application.

7. If the proposal involves large increases in employment; hazardous waste; a change in use, size, capacity, purpose, or location from an original facility; or is publicly controversial, the following is required: environmental documentation in accordance with 7 CFR part 1970; financial and statistical information; and written project description.

B. Federal Award Information

Type of Awards: Grants.

Fiscal Year Funds: FY 2023.

Available Funds: The FY 2023 funding amount is $1,265,000. Up to ten percent of the available funds may be awarded to the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 70. The Agency reserves the right to reduce funding amounts based on the Agency's determination of available funding or other Agency funding priorities.

Award Amounts: Grant funds are limited and are awarded through a competitive process.

Minimum/Maximum Award Amount: Grant awards made to Ultimate Recipients will not exceed $50,000. The Agency has capped the grant awards for Technical Assistance Providers assisting Ultimate Recipients to not exceed $150,000. This applies even if the Technical Assistance Provider covers entities in one county, multiple counties, or multiple states.

Anticipated Award Date: Awards will be made on or before September 15, 2023.

Performance Period: The grant period is to be for no more than three years.

Renewal or Supplemental Awards: Applicants may apply for funding in future funding cycles. No unfunded applications will carry over to the next funding cycle. The Agency awards points for applicants that have not received a previous grant. Applicants must re-apply for an additional grant.

Type of Assistance Instrument: Grant agreement.

C. Eligibility Information

1. *Eligible Applicants.* Both the applicant and the use of funds must meet eligibility requirements. The applicant eligibility requirements can be found at 7 CFR 3570.262 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XXXV/part-3570/subpart-F/section-3570.262*). Eligible project purposes can be found at 7 CFR 3570.263. Ineligible project purposes can be found at 7 CFR 3570.264.

Non-tribal applicants proposing to provide Technical Assistance to Tribes should provide adequate documentation (for example, a letter of support from the Tribe or Tribes) that the Technical Assistance they are proposing to provide is supported by the Tribes they plan to serve.

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

Debarment and suspension information is required in accordance with 2 CFR parts 417 (Non procurement Debarment and Suspension) and 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement). The section heading ''What information must I provide before entering into a covered transaction with a Federal agency?'' located at 2 CFR 180.335 is part of OMB's Guidance for Grants and Agreements concerning Governmentwide Debarment and Suspension. Applicants are not eligible if they have been debarred or suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs under 2 CFR parts 180 and 417.

2. *Cost Sharing or Matching.* Matching funds are not required. Matching funds must be in the form of cash. Up to 10 points may be awarded for applications that contain matching funds.

3. *Other.* All submitted applications must meet the eligibility requirements in this notice and at 7 CFR part 3570 subpart F (*https://www.ecfr.gov/current/title-7/part-3570/subpart-F*), and application requirements noted in 7 CFR 3570.267 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XXXV/part-3570/subpart-F/section-3570.267*).

Applications will not be considered for funding if they do not provide sufficient information to determine

eligibility or are missing required elements.

D. Application and Submission Information

1. *Address to Request Application Package.* For further information on the Community Facilities Technical Assistance and Training Grant Program, entities wishing to apply for assistance should contact the USDA RDSO provided in the **ADDRESSES** section of this notice to obtain copies of the application package. Application information is also available at *https://www.grants.gov/.* If you require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD) or the Federal Relay Service as (800) 877–8339. Prior to official submission of applications, applicants may request application guidance from the Agency, as long as such requests are made prior to June 12, 2023. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis.

The Agency will not solicit or consider scoring nor eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

2. *Content and Form of Application Submission.* An application must contain all of the required elements outlined in 7 CFR 3570.267. Each application must address the applicable scoring criteria presented in 7 CFR 3570.273 for the type of funding being requested.

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

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

b. Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

c. Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

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

4. *Submission Dates and Times.* Application Funding Submission Deadlines:

a. *Paper submissions:* The deadline for receipt of a paper application is 4 p.m. local time, June 20, 2023.

b. *Electronic submissions:* Electronic applications will be accepted via *Grants.gov.* The deadline for receipt of an electronic application via *Grants.gov* is 11:59 p.m. Eastern Daylight Saving Time on June 15, 2023.

Explanation of Dates: The application dates and times are firm. Applications must be in the USDA RDSO by the dates and times as indicated above. If the due date falls on a Saturday, Sunday, or Federal holiday, the application is due the next business day. The Agency will not consider any application received after the deadline.

Note: Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and postage due applications will not be accepted. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to June 12, 2023.

5. *Intergovernmental Review.* This program is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. RD conducts intergovernmental consultation as implemented with 2 CFR 415 subpart C. Not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.*

6. *Funding Restrictions.* None.

7. *Other Submission Requirements.* None.

E. Application Review Information

1. *Criteria.* All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in 7 CFR 3570.273 (*see, https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XXXV/part-3570/subpart-F/section-3570.273*). Failure to address any one of the criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

All applications that are complete and eligible will be scored and ranked competitively.

The categories for scoring criteria used are the following:

The Agency will score each application using the following scoring factors unless otherwise provided in an annual Notice in the **Federal Register***:*

(a) *Experience:* Applicant Experience at developing and implementing successful technical assistance and/or training programs:

(1) More than 10 years—40 points.

(2) More than 5 years to 10 years—25 points.

(3) 3 to 5 years—10 points.

(b) *No prior grants received:*

(1) Applicant has never received a TAT Grant—5 points.

(c) *Population:* The average population of proposed area(s) to be served:

(1) 2,500 or less—15 points.

(2) 2,501 to 5,000—10 points.

(3) 5,001 to 10,000—5 points.

(d) *MHI:* The average median household income (MHI) of proposed area to be served is below the higher of the poverty line or:

(1) 60 percent of the State's MHI—15 points.

(2) 70 percent of the State MHI—10 points.

(3) 90 percent of the State's MHI—5 points.

(e) *Multi-jurisdictional:* The proposed technical assistance or training project a part of a Multi-jurisdictional project comprised of:

(1) More than 10 jurisdictions—15 points.

(2) More than 5 to 10 jurisdictions—10 points.

(3) 3 to 5 jurisdictions—5 points.

(f) *Soundness of approach:* Up to 10 points.

(1) *Needs assessment:* The problem/issue being addressed is clearly defined, supported by data, and addresses the needs;

(2) Goals & objectives are clearly defined, tied to the need as defined in the work plan, and are measurable;

(3) Work plan clearly articulates a well thought out approach to accomplishing objectives & clearly identifies who will be served by the project;

(4) The proposed activities are needed in order for a complete Community Facilities loan and/or grant application.

(g) *Matching funds:*

(1) There is evidence of the commitment of other cash funds of 20% of the total project costs 10 points.

(2) There is evidence of the commitment of other cash funds of 10% of the total project costs 5 points.

(h) *State Director discretionary points.* The State Director may award up to 10 discretionary points for the highest priority project in each state, up to 7 points for the second highest priority project in each state and up to 5 points for the third highest priority project that address unforeseen exigencies or emergencies, such as the loss of a community facility due to an accident or natural disaster, or other areas of need in their particular state. The State Director will place written documentation in the project file each time the State Director assigns these points—Up to 10 points.

(i) *Administrator discretionary points.* The Administrator may award up to 20 discretionary points for projects to address geographic distribution of funds, emergency conditions caused by economic problems, natural disasters and other initiatives identified by the Secretary—Up to 20 points.

2. *Review and Selection Process.* The State Offices will review applications to determine if applications are eligible for assistance based on requirements contained in 7 CFR 3570, subpart F. If determined eligible, your application will be submitted to the National Office. Funding of projects is subject to the intermediary's satisfactory submission of the additional items required by that subpart and the USDA RD Letter of Conditions. Discretionary priority points, under 7 CFR 3570.273 (*see,* 7 CFR 3570.273(h) and 7 CFR 3570.273(i)), may be awarded with documented justification for the following categories:

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

F. Federal Award Administration Information

1. *Federal Award Notices.* Successful applicants will receive notification for funding from the RDSO. Applicants must comply with all applicable statutes and regulations before the grant award can be approved. If an application is withdrawn by the applicant, it can be resubmitted and will be evaluated as a new application, provided the application is resubmitted before the submission deadline as stated in section D4.

2. *Administrative and National Policy Requirements.* Additional requirements that apply to Grantees selected for this Program can be found in 7 CFR part 3570, subpart F (*https://www.ecfr.gov/current/title-7/part-3570/subpart-F*). Awards are subject to USDA grant regulations at 2 CFR part 400 (*https://www.ecfr.gov/current/title-2/part-400*) which incorporated the Office of Management and Budget (OMB) regulations at 2 CFR part 200 (*https://www.ecfr.gov/current/title-2/part-200*) which incorporate the Office of Management and Budget (OMB) regulations at 2 CFR part 200 (*https://www.ecfr.gov/current/title-2/part-200*).

If the applicant wishes to consider beginning their project performance prior to the grant being officially closed, all pre-evaluation award costs must be approved in writing and in advance by the Agency.

In addition, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see, 2 CFR part 170 (*https://www.ecfr.gov/current/title-2/part-170*). The applicant will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) and reporting requirements (see, 2 CFR 170.200(b) (*https://www.ecfr.gov/current/title-2/section-170.200#p-170.200(b)*), unless the recipient is exempt under 2 CFR 170.110(b) (*https://www.ecfr.gov/current/title-2/section-170.110#p-170.110(b)*).

The following additional requirements apply to Grantees selected for these Programs:

(a) Form RD 1940–1, ''Request for Obligation of Funds.''

(b) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(c) Form SF–LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(d) Form SF 270, ''Request for Advance or Reimbursement.''

(e) Form RD 400–4, ''Assurance Agreement'' must be completed by the applicant and each prospective ultimate recipient.

(f) Grantees must collect and maintain data provided by ultimate recipients on race, sex, and national origin and ensure ultimate recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(e) The applicant and the ultimate recipient must comply with title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

(3) *Reporting.* The Grantee must provide reports as required by 7 CFR part 3570, subpart F. A financial status report, SF 425 ''Federal Financial Report,'' and a project performance report will be required as provided in the grant agreement. The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. Applicant may find the reporting requirements for this grant as set forth at 7 CFR 3570.276 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XXXV/part-3570/subpart-F/section-3570.276*) in addition to any reports required by 2 CFR part 200 (*https://www.ecfr.gov/current/title-2/part-200*) and 2 CFR 400.1 (*https://www.ecfr.gov/current/title-2/section-400.1*) to 400.2 (*https://www.ecfr.gov/current/title-2/section-400.2*), and 2 CFR parts 415 to 422 (*https://www.ecfr.gov/current/title-2/section-415*).

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact your USDA RDSO as provided in the **ADDRESSES** section of this notice or the program website at: *https://www.rd.usda.gov/programs-services/community-facilities/community-facilities-direct-loan-grant-program.*

H. Other Information

(1) *Civil Rights Requirements.* All grants made under this Notice are subject to title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A) and section 504 of the Rehabilitation Act of 1973, title VIII of the Civil Rights Act of 1968, title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

(2) *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this notice has been approved by OMB under OMB Control Number 0575–0198.

(3) *National Environmental Policy Act.* All recipients under this notice are subject to the requirements of 7 CFR 1970, available at: *https://rd.usda.gov/resources/environmental-studies/environmental-guidance.*

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

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/USDA-OASCR%20P-Complaint-Form-0508-0002-508-11-28-17Fax2Mail.pdf?time=1671165786489,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation.

The completed AD–3027 form or letter must be submitted to USDA by:

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

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

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Joaquin Altoro,

Administrator, Rural Housing Service, USDA Rural Development.

[FR Doc. 2023–08447 Filed 4–20–23; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the South Dakota Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that the South Dakota State Advisory Committee to the Commission will convene a business meeting on Monday, May 8, 2023, at 1:00 p.m. Central Time. The purpose of the business meeting is to discuss and vote on the committee's report on voting rights and voter access in South Dakota.

DATES: Monday, May 8, 2023, at 1 p.m. central time.

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://tinyurl.com/3stmv9et; password, if needed: USCCR–SD.

Join by Phone (Audio Only): 1–551–285–1373; Meeting ID: 160 729 5158#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the meeting link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–312–353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, South Dakota Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

Agenda

I. Welcome and Roll Call

II. Announcements

III. Discussion and Vote: Report on Voting Rights and Voter Access in South Dakota

IV. Public Comment

V. Adjournment

Dated: April 18, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–08494 Filed 4–20–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Guam Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Guam Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 9:00 a.m. ChST on Tuesday, May 16, 2023, (7:00 p.m. ET on Monday, May 15, 2023) to discuss details concerning the Committee's in-person business meeting.

DATES: Tuesday, May 16, 2023, from 9:00 a.m.–10:30 a.m. ChST (Monday, May 15, 2023, from 7:00 p.m.–8:30 p.m. ET).

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://tinyurl.com/2s3tjuav.

Join by Phone (Audio Only): (833) 435–1820 USA Toll Free; Meeting ID: 160 400 6634.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Mussatt at *dmussatt@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Guam Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Announcements & Updates
III. Approval of Meeting Minutes
IV. Committee Discussion
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: April 18, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–08493 Filed 4–20–23; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Maine Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Maine Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to discuss their draft report on indigent legal services in Maine.

DATES: Thursday, May 11, 2023, from 12 p.m. ET to approximately 1:00 p.m.

ADDRESSES: The meeting will be held via Zoom.

Meeting Link (Audio/Visual): https://tinyurl.com/5yr4dspy.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Meeting ID: 161 655 9331#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, Designated Federal Officer, at *mtrachtenberg@usccr.gov* or 202–809–9618.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Evelyn Bohor at *ebohor@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg, *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Maine Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *ebohor@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Discussion of their draft report on Indigent Legal Services
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: April 18, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–08491 Filed 4–20–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority; Public Combined Board and Board Committees Meeting

AGENCY: First Responder Network Authority (FirstNet Authority), National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

ACTION: Announcement of meeting.

SUMMARY: The FirstNet Authority Board will convene an open public meeting of the Board and Board Committees.

DATES: May 3, 2023; 8:30 a.m. to 10:30 a.m. Mountain Daylight Time (MDT); Broomfield, Colorado.

ADDRESSES: The meeting will be held at the Omni Interlocken Hotel, 500 Interlocken Boulevard, Broomfield, Colorado 80021. All expected attendees are asked to provide notice of intent to attend by sending an email to *BoardRSVP@FirstNet.gov.* Members of the public may listen to the meeting and view the presentation by visiting the URL: *https://stream2.sparkstreet digital.com/20230503-firstnet.html.* If you experience technical difficulty, contact *support@sparkstreetdigital.com*. WebEx information can also be found on the FirstNet Authority website (*FirstNet.gov*).

FOR FURTHER INFORMATION CONTACT:

General information: Janell Smith, (202) 257–5929, *Janell.Smith@ FirstNet.gov.*

Media inquiries: Ryan Oremland, (571) 665–6186, *Ryan.Oremland@ FirstNet.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Middle-Class Tax Relief and Job Creation Act of 2012 (codified at 47 U.S.C. 1401 *et seq.*) (Act) established the FirstNet Authority as an independent authority within NTIA. The Act directs the FirstNet Authority to ensure the building, deployment, and operation of a nationwide interoperable public safety broadband network. The FirstNet Authority Board is responsible for making strategic decisions regarding the operations of the FirstNet Authority.

Matters to be Considered: The FirstNet Authority will post a detailed agenda for the Combined Board and Board Committees Meeting on *FirstNet.gov* prior to the meeting. The agenda topics are subject to change. Please note that the subjects discussed by the Board and Board Committees may involve commercial or financial information that is privileged or confidential, or other legal matters affecting the FirstNet Authority. As such, the Board may, by majority vote, close the meeting only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Other Information: The public Combined Board and Board Committees Meeting is accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Janell Smith at (202) 257–5929 or email: *Janell.Smith@ FirstNet.gov* at least five (5) business days (April 26) before the meeting.

Records: The FirstNet Authority maintains records of all Board proceedings. Minutes of the Combined Board and Board Committees Meeting will be available on *FirstNet.gov.*

Dated: April 17, 2023.

Janell Smith,

Board Secretary, First Responder Network Authority.

[FR Doc. 2023–08411 Filed 4–20–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Changes to Approved International Trade Administration Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing changes to two trade missions that are recruited, organized, and implemented by ITA. These missions are:

- Clinical Waste Management Mission to Indonesia and Malaysia—September 11–15, 2023
- Global Diversity Export Initiative (GDEI) Business Mission to South Africa, Ghana, and Optional Stop in Nigeria—August 6–15, 2023

The Clinical Waste Management Trade Mission to Indonesia and Malaysia will not be executive-led. The Global Diversity Export Initiative (GDEI) Business Mission to South Africa, Ghana, and Optional Stop in Nigeria will be executive-led.

Background

On March 18, 2022, the United States Department of Commerce notified the public of Winter 2022 Approved International Trade Administration Trade Missions (87 FR 15374, March 18, 2022), including the Clinical Waste Management Mission to Indonesia and Malaysia originally scheduled for March 6–10, 2023, but postponed to September 11–15, 2023 (87 FR 67441, November 8, 2022). The trade mission will not include an Executive Lead as incorrectly stated in both **Federal Register** Notices.

On February 15, 2023, the United States Department of Commerce notified the public of an Approved International Trade Administration Trade Mission, the Global Diversity Export Initiative (GDEI) Business Mission to South Africa, Ghana, and Optional Stop in Nigeria (88 FR 9858, February 15, 2023). The trade mission will include an Executive Lead, which was not indicated in the initial **Federal Register** Notice.

For Further Information Regarding the Clinical Waste Management Mission to Indonesia and Malaysia, Contact:

Tricia McLain, Global Healthcare Team, U.S. Commercial Service, Newark, Ph: +1 973–264–9646, *Tricia.McLain@ trade.gov.*

Evelina Scott, I&A Office of Energy and Environmental Industries, U.S. Department of Commerce | International Trade Administration, Ph: +1–202–603–4765, *evelina.scott@ trade.gov.*

Indonesia

Eric Hsu, Senior Commercial Officer, Jakarta, Indonesia, Ph: +62 (21) 5083 1000, *Eric.Hsu@trade.gov.*

Elliot Brewer, Indonesia Desk Officer, Global Markets Asia, Washington, DC, Ph: +1 202 430 8025, *Elliott.Brewer@ trade.gov.*

Fidhiza Purisma, Commercial Specialist (Environmental Technology), Ph: +62 (21) 5083 1000, *Fidhiza.Purisma@ trade.gov.*

Pepsi Maryarini, Commercial Specialist (Healthcare), Ph: +62 (21) 5083 1000, *Pepsi.Maryarini@trade.gov.*

Malaysia

Francis Peters, Senior Commercial Officer, Kuala Lumpur, Malaysia, Ph: +60–3–2168–4869, *Francis.Peters@ trade.gov.*

Krista Barry, Vietnam and Malaysia Desk Officer, Global Markets Asia, Washington, DC, Ph: 202–389–2298, *Krista.Barry@trade.gov.*

Siau Wei Pung, Senior Commercial Specialist (Environmental Technology), Ph: +60–3–2168–5050 Ext: 5139, *SiauWei.Pung@trade.gov.*

Bethany Tien, Commercial Specialist (Healthcare), Ph: +60–3–2168–5050 Ext: 4825, *Bethany.Tien@trade.gov.*

For Further Information Regarding the Global Diversity Export Initiative (GDEI)

Business Mission to South Africa, Ghana, and Optional Stop in Nigeria, Contact:

Terri Batch, ITS/GDEI lead, West LA USEAC, (310) 597–3575, *Terri.Batch@trade.gov*.

Nathalie Scharf, Director, St. Louis USEAC, (314) 432–1500, *Nathalie.Scharf@trade.gov*.

Cynthia Griffin, RSCO, SSA, +86–138–1197–8435, *Cynthia.Griffin@trade.gov*.

Mike Bromley, CO, South Africa, +27 11 290 3227, *Michael.Bromley@trade.gov*.

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2023–08476 Filed 4–20–23; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) continues to find that Tianjin Magnesium International Co., Ltd. (TMI) and Tianjin Magnesium Metal Co., Ltd. (TMM) (collectively, TMI/TMM) had no shipments of subject merchandise covered by the antidumping duty order on pure magnesium from the People's Republic of China (China) for the period of review (POR) May 1, 2021, through April 30, 2022.

DATES: Applicable April 21, 2023.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2023, Commerce published the *Preliminary Results* in the **Federal Register**.[1] No interested party submitted comments concerning the *Preliminary Results* or requested a hearing in this administrative review. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [2]

The product covered by the *Order* is pure magnesium from China, regardless of chemistry, form or size, unless expressly excluded from the scope of the *Order.* Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium) Magnesium Alloy'' [3] and are thus outside the scope of the existing antidumping orders on magnesium from China (generally referred to as ''alloy'' magnesium).

(2) Products that contain less than 99.95%, but not less than 99.8%, primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off-specification pure'' magnesium).

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the *Order* are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the *Order* are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined TMI/TMM had no shipments of subject merchandise to the United States during the POR.[4] As noted in the *Preliminary Results,* we received no-shipment statements from TMI/TMM, and the statements were consistent with the information we received from U.S. Customs and Border Protection (CBP).[5] Because Commerce did not receive any comments on its preliminary finding, Commerce continues to find that TMI/TMM did not have any shipments of subject merchandise during the POR.

Assessment Rates

Based on record evidence, we have determined that TMI/TMM had no shipments of subject merchandise during the POR, and, therefore, pursuant to Commerce's assessment practice, any suspended entries entered under their case number will be liquidated at the China-wide entity rate.[6]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a

[1] *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Administrative Review; 2021–2022,* 88 FR 7402 (February 3, 2023) (*Preliminary Results*).

[2] *See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995) (*Order*).

[3] The meaning of this term is the same as that used by the American Society for Testing and Materials (ATSM) in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[4] *See Preliminary Results,* 88 FR at 7403.

[5] *Id.*

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided for by section 751(a)(2)(C) of the Act: (1) For TMI/TMM, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI/TMM in the most recently completed review of the companies; (2) for previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who received a separate rate in a prior segment of the proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 111.73 percent; [7] and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protection Order

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

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a) and 777(i) of the Act, and 19 CFR 351.213(h).

Dated: April 13, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–08432 Filed 4–20–23; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Pure Magnesium from the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–826]

Paper Clips From the People's Republic of China: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) in their five year (sunset) review that revocation of the antidumping duty (AD) order on paper clips from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order on paper clips from China.

DATES: Applicable April 21, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1994, Commerce published in the **Federal Register** the AD order on paper clips from China.[1] On September 1, 2022, the ITC instituted [2] and Commerce initiated [3] the fifth five-year (sunset) review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). Commerce conducted an expedited (120-day) sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of its review, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and, therefore, Commerce notified the ITC of the magnitude of the margin of dumping likely to prevail were the *Order* to be revoked.[4]

On April 14, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The products covered by the *Order* are certain paper clips, wholly of wire of base metal, whether or not galvanized, whether or not plated with nickel or other base metal (*e.g.,* copper), with a wire diameter between 0.025 inches and 0.075 inches (0.64 to 1.91 millimeters), regardless of physical configuration, except as specifically excluded. The products subject to this investigation may have a rectangular or ring-like shape and include, but are not limited to, clips commercially referred to as 'No. 1 clips,' 'No. 3 clips,' 'Jumbo' or 'Giant' clips, 'Gem clips,' 'Frictioned clips,' 'Perfect Gems,' 'Marcel Gems,' 'Universal clips,' 'Nifty clips,' 'Peerless clips,' 'Ring clips,' and 'Glide-On clips.'

Specifically excluded from the scope of this *Order* are plastic and vinyl covered paper clips, butterfly clips, binder clips, or other paper fasteners that are not wholly made of wire of base metal and are covered under a separate subheading of the Harmonized Tariff Schedule of the United States (HTSUS).

Also excluded are Pendaflex Pile Smart Label Clips that are not wholly made of wire of base metal but are stainless steel wire attached to molded plastic parts and writeable/rewriteable labels.

[1] *See Antidumping Duty Order: Certain Paper Clips From the People's Republic of China,* 59 FR 60606 (November 25, 1994) (*Order*).

[2] *See Paper Clips From China; Institution of a Five-Year Review,* 87 FR 53783 (September 1, 2022).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 53727 (September 1, 2022).

[4] *See Paper Clips from the People's Republic of China: Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Order,* 87 FR 79858 (December 28, 2022).

[5] *See Paper Clips from China,* 88 FR 23097 (April 14, 2023).

The products subject to the order are currently classifiable under subheading 8305.90.3010 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to sections 751(c) and 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of this *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year (sunset) review and notice are in accordance with sections 751(c) and (d)(2), and 777(i)(1) the Act, and 19 CFR 351.218(f)(4).

Dated: April 17, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–08433 Filed 4–20–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC805]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Attentive Energy, LLC (AE) for authorization to take marine mammals incidental to marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (Lease) Area OCS–A 0538 and associated export cable route (ECR) area. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 22, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.lock@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Karolyn Lock, Office of Protected Resources, NMFS, (301) 427–8833. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On December 28, 2022, NMFS received a request from AE for an IHA to take marine mammals incidental to conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight, specifically within the BOEM Lease Area OCS–A 0538 and associated ECR area. Following NMFS' review of the application, the application was deemed adequate and complete on February 22, 2023. AE's request is for take of small numbers of 15 species (16 stocks) of marine mammals by Level B harassment only. Neither AE nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

AE proposes to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in coastal waters off of New Jersey and New York in the New York Bight, specifically within the BOEM Lease Area OCS–A 0538 and associated ECR area.

The planned marine site characterization surveys are designed to obtain data sufficient to meet BOEM guidelines for providing geophysical, geotechnical, and geohazard information for site assessment plan surveys and/or construction and operations plan development. The objective of the surveys is to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area. Up to two vessels may conduct survey efforts concurrently. Underwater sound resulting from AE's marine site characterization survey activities, specifically HRG surveys, have the potential to result in incidental take of marine mammals in the form of Level B harassment.

Dates and Duration

The proposed survey is planned to begin no earlier than May 1, 2023 and estimated to require 201 survey days across a maximum of two vessels operating concurrently within a single year. A ''survey day'' is defined as a 24-hour (hr) activity period in which active acoustic sound sources are used. It is expected that each vessel would cover approximately 170 kilometers (km) per day based on the applicant's expectations regarding data acquisition efficiency, and there is up to 21,745 km (13,512 miles) of track line of survey effort planned; 14,025 km in the Lease Area and 7,720 km in the ECR Area. The IHA would be effective for 1 year from the date of issuance.

Specific Geographic Region

AE's survey activities would occur in coastal waters off of New York and New Jersey in the New York Bight, specifically within Lease Area OCS–A 0538 and the associated ECR area (Figure 1). The Survey Area (*i.e.,* the Lease Area and ECR) is between 1 and 65 meters (m) in water depth. The Lease Area does not include water depths below 30 m, only portions of the ECR Area does (Figure 2).

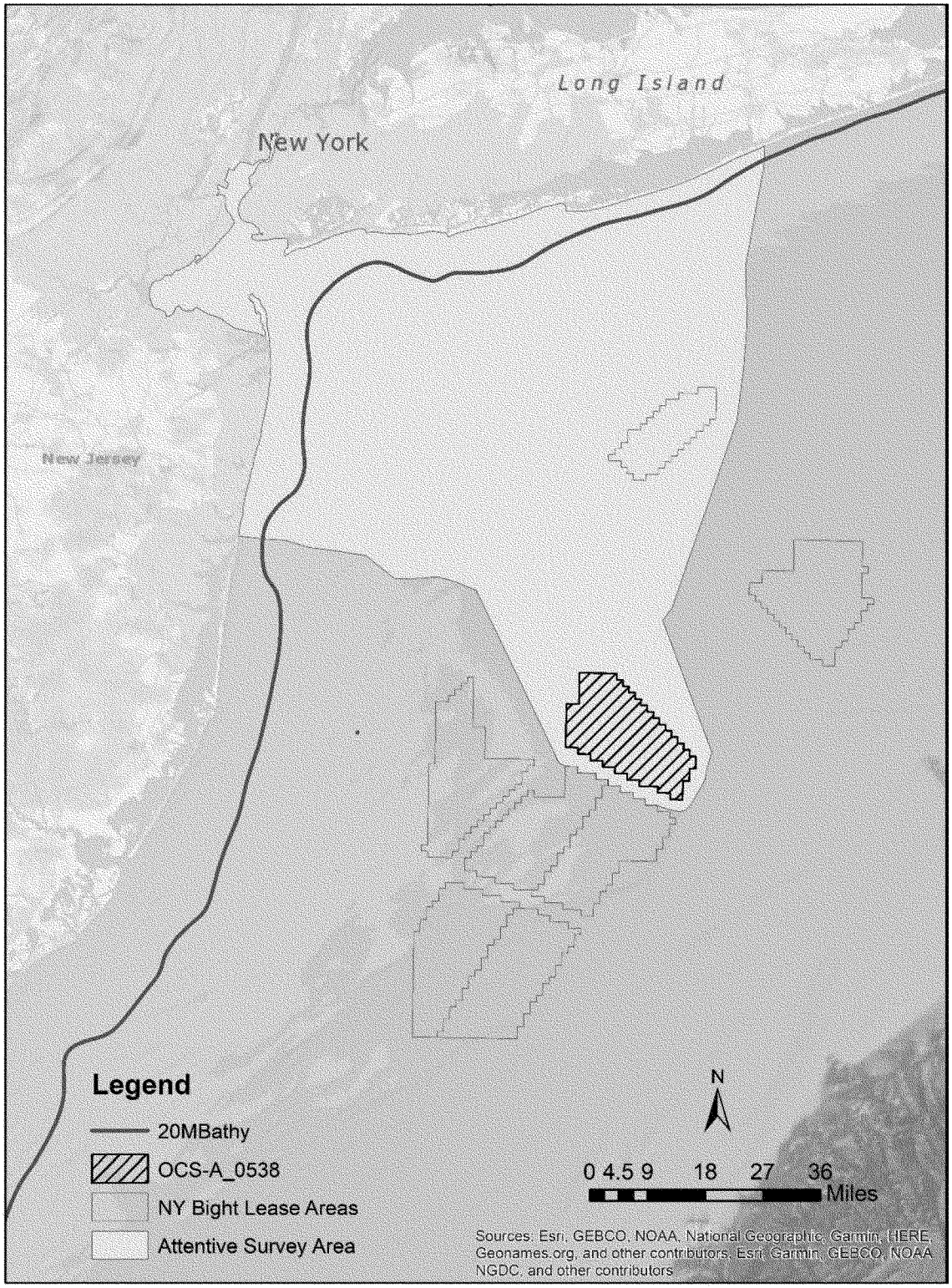

Figure 1 -- Proposed Survey Area

Figure 2 -- Proposed Survey Area with Bathymetric Contours Showing Water Depth

Detailed Description of Specified Activity

AE's marine site characterization surveys include HRG surveys and geotechnical sampling activities within the Lease Area and the ECR area. The total HRG survey tracklines for the Survey Area is 21,745 km, with 14,025 km in the Lease Area and 7,720 km in the ECR Area. The geotechnical sampling activities, including use of vibracores and seabed core penetration tests, would occur during the same period as the HRG survey activities and would use an additional survey vessel. NMFS does not expect geotechnical sampling activities to present reasonably anticipated risk of causing incidental take of marine mammals, and these activities are not discussed further in this notice.

AE proposes HRG survey operations to be conducted continuously 24 hours

a day. Based on 24-hour operations, the estimated total duration of the activities would be approximately 201 survey days across a maximum of two concurrently-operating vessels. The survey days are proposed to occur any month throughout the year as the exact timing of the surveys during the year is not yet certain.

The only acoustic sources planned for use during HRG survey activities proposed by AE with expected potential to cause incidental take of marine mammals are the sparker and boomer. Sparkers and boomers are medium penetration, impulsive sources used to map deeper subsurface stratigraphy. Sparkers create omnidirectional acoustic pulses from 50 Hz to 4 kHz, are typically towed behind the vessel, and may be operated with different numbers of electrode tips to allow tuning of the acoustic waveform for specific applications. The sparker system planned for use is the Dual Geo-Spark 2000X (400 tip/800 J). A boomer is a broadband source operating in the 3.5 Hz to 10 kHz frequency range. The boomer system planned for use is the Geo-Boomer 300–500.

Crocker and Fratantonio (2016) did not provide data for the Dual Geo-Spark 2000X but did measure a similar system (Applied Acoustics Dura-Spark). However, measurements for the Applied Acoustics Dura-Spark did not provide data for an energy setting near 800 J (for a 400-tip configuration, Crocker and Fratantonio (2016) provide measurements at 500 and 2,000 J). Therefore, AE proposes to use this sparker as proxy, at 500 J setting, as it is the closest match to the Dual Geo-Spark 2000X because of the similarities in composition and operation, with both employing up to 400-electrode tips. Similarly, no data are provided by Crocker and Fratantonio (2016) for the Geo-Boomer 300–500. However, a similar system (the Applied Acoustics S-Boom) is included in Crocker and Fratantonio (2016) and values were included for a dual plate, 500 J setting. Therefore, AE proposes to use this boomer as proxy as it is the closest match to the Geo-Boomer 300–500 because of the similarities in composition and operation, with input signal at a similar or higher energy range (100–700). NMFS concurs with these selections, which are described in Table 1.

The only acoustic sources planned for use during HRG survey activities proposed by the applicant with expected potential to cause incidental take of marine mammals are the boomer and sparker. Therefore, we will only be discussing further equipment that has the potential to harass marine mammals and is listed below in Table 1. For equipment source level specifications noted in Table 1, proxies representing the closest match in composition and operation of the Dual Geo-Spark 2000X (sparker) and Geo-Boomer 300–500 (boomer) were used from Crocker and Fratantonio (2016).

AE's surveys will likely use a combination of the boomer and sparker. However, AE has requested authorization of take based on an assumption that the sparker would be used during all survey effort as it produces a greater distance to the 160 dB root mean square (rms) threshold for acoustic impacts (see application's Table 1–3 and Section 6.1).

TABLE 1—REPRESENTATIVE SURVEY EQUIPMENT EXPECTED TO RESULT IN TAKE OF MARINE MAMMALS

Equipment type	Proxy equipment make/model	Operating frequency (kHz)	Source level (RMS dB re 1 uPa @1m)	Source level (peak dB re 1 uPa @1m)	Sound exposure level (dB re 1 uPa^2*s)	Reference	Pulse duration (ms)	Repetition rate (Hz)	Beam width (degrees)
Medium SBP–Boomer.	Applied Acoustics S–Boom 500J (boomer).	5.5	202	213	170	Crocker and Fratantonio 2016	0.70	1.4	76
Medium SBP–Sparker.	Applied Acoustics Dura-spark (400 tip/500 to 2,000 J) (sparker).	0.3–1.2	203	211	174	Crocker and Fratantonio 2016	1.1	4	180

Operation of the following additional survey equipment types is not reasonably expected to result in take of marine mammals and will not be discussed further beyond the brief summaries provided below.

- Non-impulsive, parametric sub-bottom profilers (SBPs) are used for providing high data density in sub-bottom profiles that are typically required for cable routes, very shallow water, and archaeological surveys. These sources generate short, very narrow-beam (1° to 3.5°) signals at high frequencies (generally around 85–115 kHz). The narrow beamwidth significantly reduces the potential that a marine mammal could be exposed to the signal, while the high frequency of operation means that the signal is rapidly attenuated in seawater (and cannot be heard by mysticetes). These sources are typically deployed on a pole rather than towed behind the vessel.
- Magnetic intensity measurements (gradiometer) are used for detecting local variations in regional magnetic field from geological strata and potential ferrous objects on and below the bottom. The proposed gradiometer has operating frequencies greater than 180 kHz and is therefore outside the general hearing range of marine mammals.
- Multibeam echosounders (MBESs) are used to determine water depths and general bottom topography. The proposed MBESs all have operating frequencies greater than 180 kHz and are therefore outside the general hearing range of marine mammals.
- Side scan sonars (SSS) are used for seabed sediment classification purposes and to identify natural and manmade acoustic targets on the seafloor. The proposed SSSs all have operating frequencies greater than 180 kHz and are therefore outside the general hearing range of marine mammals.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about

these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the species or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All MMPA managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 2 are the most recent available at the time of publication (draft 2022 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 2—SPECIES AND STOCKS LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
North Atlantic right whale	*Eubalaena glacialis*	Western Atlantic Stock	E/D, Y	338 (0; 332; 2020)	0.7	8.1
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	-/-; Y	1,396 (0; 1,380; 2016)	22	12.15
Fin whale	*Balaenoptera physalus*	Western North Atlantic Stock	E/D, Y	6,802 (0.24; 5,573; 2016)	11	1.8
Sei whale	*Balaenoptera borealis*	Nova Scotia Stock	E/D, Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coastal Stock.	-/-, N	21,968 (0.31; 17,002; 2016)	170	10.6
Odontoceti (toothed whales, dolphins, and porpoises)						
Sperm whale	*Physeter macrocephalus*	North Atlantic Stock	E/D, Y	4,349 (0.28; 3,451; 2016)	3.9	0
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic Stock	-/-, N	39,215 (0.3; 30,627; 2016)	306	9
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic Stock	-/-, N	93,233 (0.71; 54,443; 2016)	544	27
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Offshore Stock.	-/-, N	62,851 (0.23; 51,914; 2016)	519	28
Bottlenose dolphin	*Tursiops truncatus*	Northern Migratory Coastal	-/D, Y	6,639 (0.41; 4,759; 2016)	48	12.2–21.5
Common dolphin	*Delphinus delphis*	Western North Atlantic Stock	-/-, N	172,974 (0.21, 145,216, 2016).	1,452	390
Atlantic spotted dolphin	*Stenella frontalis*	Western North Atlantic Stock	-/-, N	39,921 (0.27; 32,032; 2016)	320	0
Risso's dolphin	*Grampus griseus*	Western North Atlantic Stock	-/-, N	35,215 (0.19; 30,051; 2016)	301	34
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy Stock.	-/-, N	95,543 (0.31; 74,034; 2016)	851	164
Order Carnivora—Pinnipedia						
Harbor seal	*Phoca vitulina*	Western North Atlantic Stock	-/-, N	61,336 (0.08; 57,637; 2018)	1,729	339
Gray seal [4]	*Halichoerus grypus*	Western North Atlantic Stock	-/-, N	27,300 (0.22; 22,785; 2016)	1,458	4,453

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*. CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600. The annual mortality and serious injury (M/SI) value given is for the total stock.

As indicated above, all 15 species (16 stocks) in Table 2 temporally and spatially co-occur with the proposed activity to the degree that take is reasonably likely to occur. While other species have been documented in the area (see application Section 3—Table 1), the temporal and/or spatial occurrence of these species is such that take is not expected to occur and they are not discussed further beyond the explanation provided here.

North Atlantic Right Whale

North Atlantic right whales (NARW) range from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2018). They are observed year round in the Mid-Atlantic Bight, and surveys have demonstrated the existence of seven areas where NARWs congregate seasonally in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2018). In the late fall months (*e.g.,* October), NARWs are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round NARW presence across their entire habitat range (for at

least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Given that AE's surveys would be concentrated offshore in the New York Bight, some NARWs may be present year round. However, the majority of NARWs in the vicinity of the survey areas are likely to be transient, migrating through the area.

Recent aerial surveys in the New York Bight showed NARW in the proposed survey area in the winter and spring, preferring deeper waters near the shelf break (NARW observed in depths ranging from 33–1,041m) but were observed throughout the survey area (Normandeau Associates and Association of Professional Energy Managers (APEM), 2020; Zoidis *et al.,* 2021). Similarly, passive acoustic data collected from 2018 to 2020 in the New York Bight showed detections of NARW throughout the year (Estabrook *et al.,* 2021). Seasonally, NARW acoustic presence was highest in the fall. NARW can be anticipated to occur in the proposed survey area year-round but with lower levels in the summer from July–September.

Since 2010, the NARW population has been in decline (Pace *et al.,* 2017), with a 40 percent decrease in calving rate (Kraus *et al.,* 2016). In 2018, no new NARW calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new NARW calves were observed. Calf numbers have increased since 2018 with 20 NARW calves documented in 2021 and 15 in 2022.

Elevated NARW mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 60 of the mortalities or serious injuries thus far. As of April 4, 2023, a total of 98 confirmed cases of mortality, serious injury, or morbidity (sublethal injury or illness) have been documented. The preliminary cause of most of these cases is from rope entanglements or vessel strikes. More information is available online at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-north-atlantic-right-whale-unusual-mortality-event.*

The proposed survey area is within a migratory corridor Biologically Important Area (BIA) for NARWs that extends from Massachusetts to Florida (LeBrecque *et al.,* 2015). There is possible migratory behavior that could occur in this area between November and April. Off the coast of New Jersey, the migratory BIA extends from the coast to beyond the shelf break.

NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for NARWs in 2008. SMAs were developed to reduce the threat of collisions between ships and NARWs around their migratory route and calving grounds. The New York/New Jersey SMA, which occurs in the New York Bight, is in the proposed survey area and is active from November 1 through April 30 of each year. Within SMAs, the regulations require a mandatory vessel speed (less than 10 knots (kn) or 5.14 meters-per-second (m/s)) for all vessels greater than 65 ft (19.8 m).

On August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify AE if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer applicable.

Humpback Whale

On September 8, 2016, NMFS divided the once single species of humpback whales into 14 distinct population segments (DPS),[1] removed the current species-level listing, and, instead, listed four DPSs as endangered and one DPS as threatened (81 FR 62259, September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the survey area. Members of the West Indies DPS disperse to multiple western North Atlantic feeding populations, including the Gulf of Maine stock designated under the MMPA. Whales occurring in the project area are considered to be from the West Indies DPS but are not necessarily from the Gulf of Maine stock. Barco *et al.* (2002) estimated that, based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock. Bettridge *et al.* (2015) estimated the size of this population at 12,312 (95 percent CI 8,688–15,954) whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003; Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

Humpback whales utilize the mid-Atlantic as a migration pathway between calving/mating grounds to the south and feeding grounds in the north (Waring *et al.,* 2007a; Waring *et al.,* 2007b). A key question with regard to humpback whales off the Mid-Atlantic states is what feeding population whales in these waters belong to.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 191 known cases (as of April 4, 2023). Of the whales examined, about 40 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that

[1] Under the Endangered Species Act, in 16 U.S.C. 1532(16), a distinct population segment (or DPS) is a vertebrate population or group of populations that is discrete from other populations of the species and significant in relation to the entire species. NOAA Fisheries and the US Fish and Wildlife Service released a joint statement on February 7, 1996 (61 FR 4722) that defines the criteria for identifying a population as a DPS.

could provide additional insight into how these vessel interactions occurred. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Fin Whale

Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year (Waring *et al.,* 2016). They are typically found in small groups of up to five individuals (Brueggeman *et al.,* 1987). The main threats to fin whales are fishery interactions and vessel collisions (Waring *et al.,* 2016).

The western north Atlantic stock of fin whales includes the area from Central Virginia to Newfoundland/Labrador Canada. This region is primarily a feeding ground for this migratory species that tend to calve and breed in lower latitudes or offshore. There is currently no critical habitat designated for this species.

Aerial surveys in the New York Bight observed fin whales year-round throughout the survey area, but they preferred deeper waters near the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic data from 2018 to 2020 also detected fin whales throughout the year (Estabrook *et al.,* 2021).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland. Sei whales occur in shallower waters to feed. Currently there is no critical habitat for sei whales, though they can be observed along the shelf edge of the continental shelf. The main threats to this stock are interactions with fisheries and vessel collisions.

Aerial surveys conducted in the New York Bight observed sei whales in both winter and spring, though they preferred deeper waters near the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic data in the survey area detected sei whales throughout the year except January and July with highest detections in March and April (Estabrook *et al.,* 2021).

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Waring *et al.,* 2016). This species generally occupies waters less than 100-m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in the survey areas, in which spring to fall are times of relatively widespread and common occurrence while during winter the species appears to be largely absent (Waring *et al.,* 2016). Aerial surveys in the New York Bight area found that minke whales were observed throughout the survey area with highest numbers sighting in the spring months (Normandeau Associates and APEM, 2020).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 142 strandings (as of March 23, 2023). This event has been declared a UME; as of 2023, it is pending closure. Full or partial necropsy examinations were conducted on more than 60 percent of the stranded whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.,* 2014). They are rarely found in waters less than 300 m deep. The basic social unit of the sperm whale appears to be the mixed school of adult females, their calves, and some juveniles of both sexes, normally numbering 20–40 animals. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). In summer, the distribution of sperm whales includes the area northeast of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whales occur south of New England on the continental shelf at its highest level. In winter, sperm whales are concentrated east and northeast of Cape Hatteras, North Carolina.

Aerial studies in the New York Bight observed sperm whales in the highest number in the summer, with a preference for the shelf break (Normandeau Associates and APEM, 2020). Passive acoustic recordings of sperm whale recorded them throughout the year, and again highest during spring and summer (Estabrook *et al.,* 2021).

Risso's Dolphin

The Western North Atlantic stock of Risso's dolphin occurs from Florida to eastern Newfoundland. They are common on the northwest Atlantic continental shelf in summer and fall with lower abundances in winter and spring. Aerial surveys in the New York Bight area sighted Risso's dolphins throughout the year at the shelf break with highest abundances in spring and summer (Normandeau Associates and APEM, 2020).

Long-Finned Pilot Whale

For pilot whales, only long-finned pilot whales are expected to occur in this project area due to their more northerly distribution and tolerance of shallower, colder shelf waters (Hayes *et al.,* 2022). Long-finned pilot whales are found from North Carolina to Iceland, Greenland, and the Barents Sea (Waring *et al.,* 2016). In U.S. Atlantic waters, the Western North Atlantic stock is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring. In late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016). Additionally, aerial surveys conducted in the New York Bight noted a preference for deeper water at the shelf break throughout the year (Normandeau Associates and APEM, 2020).

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2016). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire) with even lower numbers south of Georges Bank as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern

Georges Bank to southern Gulf of Maine (Payne and Heinemann, 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities. Aerial studies confirmed observations in fall and winter in the New York Bight area with preference for deep water at the shelf break throughout the year (Normandeau Associates and APEM, 2020).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to the Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). The Western North Atlantic stock regularly occur in continental shelf waters south of Cape Hatteras, North Carolina and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014).

Common Dolphin

Common dolphins within the U.S. Atlantic EEZ belong to the Western North Atlantic stock, generally occurring from Cape Hatteras to the Scotian Shelf (Hayes *et al.,* 2021). Common dolphins are a highly seasonal, migratory species. Within the U.S. Atlantic EEZ, this species is distributed along the continental shelf and typically associated with Gulf Stream features (CETAP, 1982; Selzer and Payne, 1988; Hamazaki, 2002; Hayes *et al.,* 2021). They are commonly found over the continental shelf between the 100 m and 2,000 m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016). Common dolphins occur from Cape Hatteras northeast to Georges Bank (35° to 42° N) during mid-January to May and move as far north as the Scotian Shelf from mid-summer to fall (Selzer and Payne, 1988). Migration onto the Scotian Shelf and continental shelf off Newfoundland occurs when water temperatures exceed 51.8° Fahrenheit (11° Celsius) (Sergeant *et al.,* 1970; Gowans and Whitehead, 1995). Breeding usually takes place between June and September (Hayes *et al.,* 2019). Kraus *et al.* (2016) observed 3,896 individual common dolphins within the Rhode Island/Massachusetts Wind Energy Area (RI-MA WEA). Summer surveys included observations of the most individuals followed by fall, winter, then spring.

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes in the Western North Atlantic: Western North Atlantic Northern Migratory Coastal Stock (coastal stock) and the Western North Atlantic Offshore Stock (offshore stock) (Waring *et al.,* 2016). The coastal stock resides in waters typically less than 20 m deep, along the inner continental shelf (within 7.5 km (4.6 miles) of shore), around islands, and is continuously distributed south of Long Island, New York into the Gulf of Mexico. Torres *et al.* (2003) found a statistically significant break in the distribution of the ecotypes at 34 km from shore based upon the genetic analysis of tissue samples collected in nearshore and offshore waters from New York to central Florida. The offshore stock was found exclusively seaward of 34 km and in waters deeper than 34 m.

The offshore stock is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys (Waring *et al.,* 2017; Hayes *et al.,* 2018). Both stocks of bottlenose dolphins are likely to occur in the proposed survey area. These two stocks are considered geographically separated by the 20 m depth contour with the Coastal Stock found in waters less than 20 m and the Offshore Stock in waters greater than 20 m.

Harbor Porpoise

In the project area, only the Gulf of Maine/Bay of Fundy stock of harbor porpoises may be present in the fall and winter. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150-m deep (Waring *et al.,* 2016). During fall (October to December) and spring (April to June), they are more widely dispersed from New Jersey to Maine with lower densities farther north and south. In winter (January to March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina with lower densities found in waters off New York to New Brunswick, Canada (Hayes *et al.,* 2020). They are seen from the coastline to deep waters (>1,800-m; Westgate *et al.,* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2016). The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2016).

Pinnipeds (Harbor Seal and Gray Seal)

Gray seals are regularly observed in the survey area and these seals belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador Sea. This species inhabits temperate and sub-arctic waters and lives on remote, exposed islands, shoals, and sandbars (Jefferson *et al.,* 2008). Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2016). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2016). It is believed that recolonization by Canadian gray seals is the source of the U.S. population increase (Waring *et al.,* 2016). Documented haulouts for gray seals exist in the Long Island area, with a possible rookery on Little Gull Island.

Since June 2022, elevated numbers of sick and dead harbor seal and gray seal have been documented along the southern and central coast of Maine. This event has also been declared an UME. Preliminary testing of samples found that some harbor and gray seals were positive for the highly pathogenic avian influenza. NMFS and other partners are working on an ongoing investigation of this UME. From June 1, 2022–February 19, 2023 there have been 337 seal strandings. Information on these UME's are available online at: *https://www.fisheries.noaa.gov/2022-2023-pinniped-unusual-mortality-event-along-maine-coast.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-

frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring in the mid-Atlantic region, including the New York Bight (*e.g.,* 87 FR 24103, April 22, 2022; 87 FR 50293, August 16, 2022; 87 FR 51359, August 22, 2022). No significant new information is available, and we reference the detailed discussions in those documents rather than repeating the details here.

The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Summary on Specific Potential Effects of Acoustic Sound Sources

For general information on sound, its interaction with the marine environment, and a description of acoustic terminology, please see ANSI (1986, 1995), Au and Hastings (2008), Hastings and Popper (2005), Mitson (1995), NIOSH (1998), Richardson *et al.* (1995), Southall *et al.* (2007), and Urick (1983). Underwater sound from active acoustic sources can cause one or more of the following: temporary or permanent hearing impairment, behavioral disturbance, masking, stress, and non-auditory physical effects. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS; permanent threshold shift), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS; temporary threshold shift), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Animals in the vicinity of AE's proposed HRG survey activities are unlikely to incur even TTS due to the characteristics of the sound sources, which include generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS because it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and remain very close to the vessel operating these sources in order to receive multiple exposures at relatively high levels as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range.

Behavioral disturbance to marine mammals from sound may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic signals given the directionality of the signals for the HRG survey equipment planned for use (Table 1–2 of AE's IHA application) and the brief period for when an individual mammal would likely be exposed.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, and zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts (if any) for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly. Finally, the HRG survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

Vessel Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are normally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 knots (2.1–2.6 m/s). At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

The potential effects of AE's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound produced by the sparker or boomer. Based on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation), nor proposed to be authorized. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict

(*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 µPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur. AE's proposed activities include the use of impulsive (*i.e.,* boomer and sparker) sources, and therefore, the RMS SPL thresholds of 160 dB re 1 µPa is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

AE's proposed activity includes the use of impulsive (*i.e.,* boomer and sparker) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see AE's application for details of a quantitative exposure analysis exercise, *i.e.,* calculated Level A harassment isopleths and estimated potential Level A harassment exposures. AE did not request authorization of take by Level A harassment, and no take by Level A harassment is proposed for authorization by NMFS.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS 2020). This methodology incorporates frequency and directionality (when relevant) to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 1). AE used 180-degree beamwidth in the calculation for the proposed sparker as is appropriate for an omnidirectional source.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG survey equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases where the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment type used during the planned surveys and the source levels associated with those HRG equipment types.

AE proposed to use the Dual Geo-Spark 2000X (400 tip/800 J). For all source configurations (Table 1), the maximum power expected to be discharged from the sparker source is 800 J. However, Crocker and Fratantonio (2016) did not measure the Dual Geo-Spark or a source with an energy of 800 J. A similar alternative system, the Applied Acoustics Dura-spark with a 400 tip, was measured by Crocker and Fratantonio (2016) with an input voltage of 500–2,000 J, and these measurements were used as a proxy for the Dual Geo-Spark. Table 1 shows the source parameters associated with this proxy. Using the measured source level of 203 dB RMS of the proxy, results of modeling indicated that the sparker would produce an estimated distance of 141 m to the Level B harassment isopleth.

AE additionally proposed to use the Geo-Boomer 300–500. Crocker and Fratantonio (2016) did not measure the Geo-Boomer 300–500. A similar alternative system, Applied Acoustics S-Boom, was measured by Crocker and Fratantonio (2016) and the 500 J values were used as a proxy for the Geo-Boomer 300–500. Using the measured source level of 202 dB RMS of the proxy, results of modeling indicated that the boomer would produce an estimated distance of 51 m to the Level B harassment isopleth.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment proposed for use by the applicant that has the potential to result in Level B harassment of marine mammals, the Dual Geo-Spark 2000X would produce the largest distance to the Level B harassment isopleth (141 m).

Marine Mammal Occurrence

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information, which will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016; Roberts *et al.,* 2022) represent the best available information regarding marine mammal densities in the proposed survey area. These density data incorporate aerial and shipboard line-transect survey data from NMFS and other organizations and incorporate data from numerous physiographic and dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). Most recently, in 2022, models for all taxa were updated. More information is available online at

https://seamap.env.duke.edu/models/Duke/EC/. Marine mammal density estimates in the survey area (animals/km²) were obtained using the most recent model results for all taxa.

For the exposure analysis, density data from Roberts *et al.* (2022) were mapped using a geographic information system (GIS). For the survey area, the monthly densities of each species as reported by Roberts *et al.* (2022) were averaged by season; thus, a density was calculated for each species for spring, summer, fall, and winter. Density seasonal averages were calculated for both the Lease Area and the ECR Area for each species to assess the greatest average seasonal densities for each species. To be conservative since the exact timing for the survey during the year is uncertain, the greatest average seasonal density calculated for each species was carried forward in the exposure analysis, with exceptions noted later in this discussion. Estimated greatest average seasonal densities (animals/km²) of marine mammal species that may be taken incidental to the planned survey can be found in Tables 6–1 and 6–2 of AE's IHA application. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2022) models provide results at the genus or guild level.

There are two stocks of bottlenose dolphins that may be impacted by the surveys (Western North Atlantic Northern Migratory Coastal Stock (coastal stock) and the Western North Atlantic Offshore Stock (offshore stock)). However, Roberts *et al.* (2022) do not differentiate by stock. The Coastal Stock is assumed to generally occur in waters less than 20 m and the Offshore Stock in waters deeper than 20 m (65-ft) isobath.

The lease area is in waters deeper than 20 m and only the Offshore Stock would occur and could be potentially taken by survey effort in that area. For the ECR survey area, both stocks could occur in the area, so AE calculated separate mean seasonal densities for the portion to be surveyed that is less than 20 m in depth and for the portion that is greater than 20 m in depth to use for estimating take of the Coastal and Offshore Stocks of bottlenose dolphins, respectively. The total tracklines in waters deeper than 20 m, between the ECR and the lease area, are 20,305 km. The total tracklines in waters less than 20 m depth, only found in portions of the ECR, are 1,440 km. Therefore, different trackline totals were used to calculate take of the Coastal and Offshore Stocks of bottlenose dolphins (20,305 km trackline of Offshore Stock and 1,440 km trackline of the Coastal Stock). All other species analyzed used the total 21,745 km of trackline for calculations.

Furthermore, the Roberts *et al.* (2022) density model does not differentiate between the different pinniped species. For seals, given their size and behavior when in the water, seasonality, and feeding preferences, there is limited information available on species-specific distribution. Density estimates of Roberts *et al.* (2022) include all seal species that may occur in the Western North Atlantic combined (*i.e.,* harbor, gray, hooded, and harp). For this IHA, only the harbor seals and gray seals are reasonably expected to occur in the survey area; densities of seals were split evenly between these two species.

Lastly, the Roberts *et al.* (2022) density model does not differentiate between the pilot whale species. While the exact latitudinal ranges of the two species are uncertain, only long-finned pilot whales are expected to occur in this project area due to their more northerly distribution and tolerance of shallower, colder shelf waters (Hayes *et al.,* 2022).

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds are calculated, as described above. The maximum distance (*i.e.,* 141-m distance associated with the Dual Geo-Spark 2000X) to the Level B harassment criterion and the total length of the survey trackline are then used to calculate the total ensonified area, or zone of influence (ZOI) around the survey vessel.

AE proposes to conduct the survey, using either the boomer or sparker, for a total of 21,745 km of trackline, of which 14,025 km are in the Lease area and 7,720 km in the ECR area. Of the ECR survey trackline, 1,440 km are in waters less than 20 m depth. AE is requesting take based on the worst-case-scenario between the equipment proposed, which is the use of only the Dual Geo-Spark 2000X—based on the largest estimated distance to the harassment criterion. Based on the maximum estimated distance to the Level B harassment threshold of 141-m (sparker) and the total survey length, the total ensonified area is 6,133 km². That is approximately 3,955 km² for the lease area and 2,177 km² in the ECR area with 407 km² in waters less than 20 m depth based on the following formula:

$$\textit{Mobile Source ZOI} = (\textit{Total survey length} \times 2r) + \pi r^2$$

Where total survey length is equal to the total distance of the survey track lines within the lease area; and r is equal to the maximum radial distance from a given sound source to the Level B harassment threshold.

This is a conservative estimate as it assumes the HRG source that results in the greatest isopleth distance to the Level B harassment threshold would be operated at all times during the entire survey, which may not ultimately occur and assumes the worst case scenario is the scenario chosen for the surveys. The number of marine mammals expected to be incidentally taken during the total survey is then calculated by estimating the number of each species predicted to occur within the ensonified area (animals/km²), incorporating the greatest seasonal estimated marine mammal densities as described above. The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula with the resulting take of marine mammals shown below in Table 4:

$$\textit{Estimated Take} = D \times ZOI$$

Where:

D is the greatest average seasonal species density (per km²); and

ZOI is the maximum daily ensonified area to relevant thresholds.

TABLE 4—ESTIMATED TAKE NUMBERS AND TOTAL TAKE PROPOSED FOR AUTHORIZATION

Species	Ensonified area (km²)	Density (animals/km²)	Estimated take	Proposed total take authorization	Percent of abundance [c]
North Atlantic right whale	6,133	0.001932	12	12	3.51
Humpback whale	6,133	0.003853	24	24	1.69

TABLE 4—ESTIMATED TAKE NUMBERS AND TOTAL TAKE PROPOSED FOR AUTHORIZATION—Continued

Species	Ensonified area (km^2)	Density (animals/km^2)	Estimated take	Proposed total take authorization	Percent of abundance [c]
Fin whale	6,133	0.006256	38	38	0.56
Sei whale	6,133	0.001972	12	12	0.19
Minke whale	6,133	0.029226	179	179	0.82
Sperm whale	6,133	0.000447	3	3	0.06
Risso's dolphin	6,133	0.003695	23	23	0.06
Long-finned pilot whale	6,133	0.003363	21	21	0.05
Atlantic white-sided dolphin	6,133	0.033740	207	207	0.22
Common dolphin	6,133	0.335271	2,056	2,056	1.19
Atlantic spotted dolphin	6,133	0.014496	89	89	0.22
Bottlenose dolphin (W.N. Atlantic Offshore) [a]	5,727	0.304831	1,746	1,746	2.78
Bottlenose dolphin (Northern Migratory Coastal) [b]	407	0.956430	389	389	5.86
Harbor porpoise	6,133	0.178544	1,095	1,095	1.15
Harbor seal	6,133	[d] 0.260186	1,596	1,596	2.60
Gray seal	6,133	[d] 0.260186	1,596	1,596	[e] 0.35

[a] The ensonified area for the offshore stock is for ≥20 m water depth includes all the lease area and portions of the ECR.
[b] The ensonified area for the migratory coastal stock is only the areas of <20 m water depth (found only in portions of the ECR).
[c] Based on the 2022 draft marine mammal stock assessment reports (SAR).
[d] These each represent 50% of a generic seal density value.
[e] This abundance estimate is based on the total stock abundance (including animals in Canada). The NMFS stock abundance estimate for US population is only 27,300.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

NMFS proposes that the following mitigation measures be implemented during AE's planned marine site characterization surveys. Pursuant to section 7 of the ESA, AE would also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Visual Monitoring and Shutdown Zones

AE must employ independent, dedicated, trained PSOs, meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

During survey operations (*e.g.,* any day on which use of the sparker or boomer sources is planned to occur, and whenever the sparker or boomer source is in the water, whether activated or not), a minimum of one visual marine mammal observer (PSO) must be on duty on each source vessel and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). A minimum of two PSOs must be on duty on each source vessel during nighttime hours. Visual monitoring must begin no less than 30 minutes prior to ramp-up (described below) and must continue until one hour after use of the sparker or boomer source ceases.

Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs shall establish and monitor applicable shutdown zones (see below). These zones shall be based upon the radial distance from the sparker or boomer source (rather than being based around the vessel itself).

Four shutdown zones are defined, depending on the species and context. An extended shutdown zone encompassing the area at and below the sea surface out to a radius of 500 m from the sparker or boomer source (0–500 m) is defined for NARW. For all other marine mammals, the shutdown zone

encompasses a standard distance of 100 m (0–100 m) during the use of the sparker. For ESA-listed marine mammals during the use of the boomer, the shutdown zone is 100 m (0–100 m). For all non-ESA-listed marine mammals, the shutdown zone during the use of the boomer is 50 m (0–50 m). Any observations of marine mammals by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Pre-Start Clearance and Ramp-Up Procedures

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the sparker and boomer sources when technically feasible. Operators should ramp up sparker and boomer to half power for 5 minutes and then proceed to full power. A 30-minute pre-start clearance observation period of the shutdown zones must occur prior to the start of ramp-up. The intent of the pre-start clearance observation period (30 minutes) is to ensure no marine mammals are within the shutdown zones prior to the beginning of ramp-up. The intent of the ramp-up is to warn marine mammals of pending operations and to allow sufficient time for those animals to leave the immediate vicinity. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the shutdown zones for 30 minutes prior to the initiation of ramp-up (pre-start clearance). During this 30 minute pre-start clearance period the entire shutdown zone must be visible, except as indicated below.
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated.
- A visual PSO conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.
- Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that mitigation commands are conveyed swiftly while allowing PSOs to maintain watch.

The pre-start clearance requirement is waived for small delphinids and pinnipeds. Detection of a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno, Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped within the shutdown zone does not preclude beginning of ramp-up, unless the PSO confirms the individual to be of a genus other than those listed, in which case normal pre-clearance requirements apply.

If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which the pre-clearance requirement is waived), PSOs may use best professional judgment in making the decision to call for a shutdown.

- Ramp-up may not be initiated if any marine mammal to which the pre-start clearance requirement applies is within the shutdown zone. If a marine mammal is observed within the shutdown zone during the 30-minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (30 minutes for all baleen whale species and sperm whales and 15 minutes for all other species).
- PSOs must monitor the shutdown zones 30 minutes before and during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the applicable shutdown zone.
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 minutes prior to beginning ramp-up. Sparker or boomer activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable shutdown zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Shutdown Procedures

All operators must adhere to the following shutdown requirements:

- Any PSO on duty has the authority to call for shutdown of the sparker or boomer source if a marine mammal is detected within the applicable shutdown zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.
- When the sparker or boomer source is active and a marine mammal appears within or enters the applicable shutdown zone, the source must be shut down. When shutdown is instructed by a PSO, the sparker or boomer source must be immediately deactivated and any dispute resolved only following deactivation.
- Four shutdown zones are defined, depending on the species and context. An extended shutdown zone encompassing the area at and below the sea surface out to a radius of 500 m from the sparker or boomer source (0–500 m) is defined for NARW. For all other marine mammals, the shutdown zone encompasses a standard distance of 100 m (0–100 m) during the use of the sparker. For ESA-listed marine mammals during the use of the boomer, the shutdown zone is 100 m (0–100 m). For all non-ESA-listed marine mammals, the shutdown zone during use of the boomer is 50 m (0–50 m).

The shutdown requirement is waived for small delphinids and pinnipeds. If a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno, Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped is visually detected within the shutdown zone, no shutdown is required unless the PSO confirms the individual to be of a genus other than those listed, in which case a shutdown is required.

If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger shutdown zone), PSOs may use best professional judgment in making the decision to call for a shutdown.

Upon implementation of shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable shutdown zone or following a clearance period (30

minutes for all baleen whale species and sperm whales and 15 minutes for all other species) with no further detection of the marine mammal. If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (141 m sparkers, 51 m boomers), shutdown must occur.

Vessel Strike Avoidance

Crew and supply vessel personnel must have access to and use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel(s), or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammals. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances are detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammal from other phenomena and (2) broadly to identify a marine mammal as a NARW, other whale (defined in this context as sperm whales or baleen whales other than NARWs), or other marine mammals.

All survey vessels, regardless of size, must observe a 10-knot (18.52 km/h) speed restriction in specific areas designated by NMFS for the protection of NARWs from vessel strikes. These include all Seasonal Management Areas (SMA) established under 50 CFR 224.105 (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.

- All vessels must reduce speed to 10 knots (18.52 km/h) or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from NARWs, baleen whales (except humpback and minke), sperm whales, and any unidentified large whales. If a NARW, baleen whale (except humpback and minke), or an unidentified large whale is sighted within the relevant separation distance, the vessel must steer a course away at 10 kn (18.52 km/h) or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species other than a NARW, the vessel operator must assume that it is a NARW and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from all humpback and mike whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the PSO team will consult NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations, and for the establishment of DMAs and/or Slow Zones. It is AE's responsibility to maintain awareness of the establishment and location of any such areas and to abide by these requirements accordingly.

Seasonal Operating Requirements

As described above, a section of the survey area partially overlaps with a portion of a NARW SMA off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. The survey vessel, regardless of length, would be required to adhere to vessel speed restrictions (<10 knots (18.52 km/h)) when operating within the SMA during times when the SMA is active.

TABLE 5—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREAS

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Lease Area ECR (within SMA) ECR (outside SMA)	North Atlantic right whale (*Eubalaena glacialis*).	If established by NMFS, all of AE's vessel will abide by the described restrictions.		N/A. November 1 through April 31 (Ports of New York/New Jersey). N/A.

More information on Ship Strike Reduction for the NARW can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales*.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge

of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

Visual monitoring must be performed by qualified, NMFS-approved PSOs. AE must submit PSO resumes for NMFS review and approval prior to commencement of the survey. Resumes should include dates of training and any prior NMFS approval, as well as dates and description of last experience, and must be accompanied by information documenting successful completion of an acceptable training course.

For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, who would coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

At least one PSO aboard each acoustic source vessel must have a minimum of 90 days at-sea experience working in the role, with no more than 18 months elapsed since the conclusion of the at-sea experience. One PSO with such experience must be designated as the lead for the entire PSO team and serve as the primary point of contact for the vessel operator. (Note that the responsibility of coordinating duty schedules and roles may instead be assigned to a shore-based, third-party monitoring coordinator.) To the maximum extent practicable, the lead PSO must devise the duty schedule such that experienced PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

AE must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but AE is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

The PSOs will be responsible for monitoring the waters surrounding the survey vessel to the farthest extent permitted by sighting conditions, including Shutdown Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Shutdown Zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine

mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Shutdown Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, appropriate night-vision devices (*e.g.,* night-vision goggles with thermal clip-ons and infrared technology) would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs must also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources and between acquisition periods, to the maximum extent practicable. Any observations of marine mammals by crew members aboard the vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Proposed Reporting Measures*). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances). Members of the PSO team shall consult the NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations.

Proposed Reporting Measures

AE shall submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in Environmental Systems Research Institute, Inc (ESRI) shapefile format and include the Coordinated Universal Time (UTC) date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov, nmfs.gar.incidental-take@noaa.gov,* and *ITP.lock@noaa.gov.*

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel names (source vessel), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. PSO names and affiliations;
4. Date and participants of PSO briefings;
5. Visual monitoring equipment used;
6. PSO location on vessel and height of observation location above water surface;
7. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
8. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
9. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
10. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
11. Water depth (if obtainable from data collection software);
12. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
13. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and
14. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).
15. Upon visual observation of any marine mammal, the following information must be recorded:
a. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
b. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
c. PSO who sighted the animal;
d. Time of sighting;
e. Initial detection method;
f. Sightings cue;
g. Vessel location at time of sighting (decimal degrees);
h. Direction of vessel's travel (compass direction);
i. Speed of the vessel(s) from which the observation was made;
j. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;
k. Species reliability (an indicator of confidence in identification);
l. Estimated distance to the animal and method of estimating distance;
m. Estimated number of animals (high/low/best);
n. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);
o. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings,

shape and size of dorsal fin, shape of head, and blow characteristics);

p. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);

q. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, *etc.*) and time and location of the action;

r. Equipment operating during sighting;

s. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and

t. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on the project vessel, during surveys or during vessel transit, AE must report the sighting information to the NMFS NARW Sighting Advisory System (866–755–6622) within 2 hours of occurrence, when practicable, or no later than 24 hours after occurrence. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*http://www.whalealert.org*).

In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the incident must be reported to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.incidental-take@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*). The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

2. Species identification (if known) or description of the animal(s) involved;

3. Condition of the animal(s) (including carcass condition if the animal is dead);

4. Observed behaviors of the animal(s), if alive;

5. If available, photographs or video footage of the animal(s); and

6. General circumstances under which the animal was discovered.

In the event of a ship strike of a marine mammal by any vessel involved in the activities, AE must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.incidental-take@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;

2. Species identification (if known) or description of the animal(s) involved;

3. Vessel's speed during and leading up to the incident;

4. Vessel's course/heading and what operations were being conducted (if applicable);

5. Status of all sound sources in use;

6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

8. Estimated size and length of animal that was struck;

9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;

10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

11. Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

12. To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 2, given that some of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are included as separate subsections below. Specifically, we provide additional discussion related to NARW and to other species currently experiencing UMEs.

NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects, auditory physical effects, and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of Level B harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007; Ellison *et al.,* 2012).

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141-m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the

disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

North Atlantic Right Whales

The status of the NARW population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated NARW mortalities began in June 2017 and there is an active UME. Overall, preliminary findings attribute human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of NARWs. As noted previously, the survey area overlaps a migratory corridor BIA for NARWs that extends from Massachusetts to Florida and from the coast to beyond the shelf break. Due to the fact that the planned survey activities are temporary (will occur for up to 1 year) and the spatial extent of sound produced by the survey would be small relative to the spatial extent of the available migratory habitat in the BIA, NARW migration is not expected to be impacted by the survey. This important migratory area is approximately 269,488 km² in size (compared with the worst case scenario of approximately 6,133 km² of total estimated Level B harassment ensonified area associated with both the Lease Area and the ECR area surveys) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts.

Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during AE's planned activities. Additionally, only very limited take by Level B harassment of NARWs has been requested and is being proposed for authorization by NMFS as HRG survey operations are required to maintain and implement a 500-m shutdown zone. The 500-m shutdown zone for NARWs is conservative, considering the Level B harassment isopleth for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 141-m, and thereby minimizes the intensity and duration of any potential incidents of behavioral harassment for this species. As noted previously, Level A harassment is not expected due to the small estimated zones in conjunction with the aforementioned shutdown requirements. NMFS does not anticipate NARWs takes that would result from AE's proposed activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of AE's survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

Elevated numbers of harbor seal and gray seal mortalities were first observed between 2018–2020 and, as part of a separate UME, again in 2022. These have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus (2018–2020) and avian influenza (2022), although additional testing to identify other factors that may be involved in the UMEs is underway. The UMEs do not provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 60,000 and annual M/SI (339) is well below PBR (1,729) (Hayes *et al.,* 2023). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2021; Hayes *et al.,* 2023).

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 2, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury. No Level A harassment is anticipated, even in the absence of mitigation measures, or proposed for authorization.

NMFS expects that takes would be in the form of short-term Level B harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed to be authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed to be authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the ensonified areas during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B harassment only consisting of brief startling reactions and/or temporary avoidance of the ensonified area;
- Survey activities would occur in such a comparatively small portion of the BIA for the NARW migration that any avoidance of the area due to survey

activities would not affect migration. In addition, mitigation measures require shutdown at 500 m (almost four times the size of the Level B harassment zone of 141 m) to minimize the effects of any Level B harassment take of the species; and

- The proposed mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take by Level B harassment only of 15 marine mammal species with 16 managed stocks. The total amount of takes proposed for authorization is less than 6 percent relative to the best available population abundance for any of the 16 managed stocks (highest being for the Western North Atlantic Migratory Coastal Stock of Bottlenose dolphins) (Table 4). The take numbers proposed for authorization are considered conservative estimates for purposes of the small numbers determination as they assume all takes represent different individual animals, which is unlikely to be the case.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources (OPR) is proposing to authorize take of four species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, and sperm whale, and has determined that these activities fall within the scope of activities analyzed in NMFS Greater Atlantic Regional Fisheries Office's (GARFO) programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to AE for conducting marine site characterization surveys in coastal waters off of New York and New Jersey in the New York Bight for a period of 1 year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 18, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC817]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys in the New York Bight

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

ACTION: Notice; proposed incidental harassment authorization (IHA); request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Community Offshore Wind, LLC (COSW) for authorization to take marine mammals incidental to marine site characterization surveys in coastal waters off of New Jersey and New York in the New York Bight, specifically within the Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS) Lease Area OCS–A 0539 (Lease Area) and associated Export Cable Route (ECR) survey area (ECR Area). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 22, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.clevenstine@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On November 17, 2022, NMFS received a request from COSW for an IHA to take marine mammals incidental to conducting marine site characterization surveys in coastal waters off of New Jersey and New York in the New York Bight, specifically within the BOEM Lease Area OCS–A 0539 and associated ECR Area. Following NMFS' review of the application, COSW submitted a revised request on February 27, 2023. NMFS deemed the application adequate and complete on March 1, 2023. COSW's request is for take of small numbers of 15 species (16 stocks) of marine mammals by Level B harassment only. Neither COSW nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

COSW proposes to conduct marine site characterization surveys, including high-resolution geophysical (HRG) surveys, in coastal waters off of New Jersey and New York in the New York Bight, specifically within BOEM Lease Area OCS–A 0539 and associated ECR Area, collectively considered the Survey Area.

The planned marine site characterization surveys are designed to obtain data sufficient to meet BOEM guidelines for providing geophysical, geotechnical, and geohazard information for site assessment plan surveys and/or construction and operations plan development. The objective of the surveys is to support the site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Survey Area. Up to three vessels may conduct survey efforts concurrently. Underwater sound resulting from COSW's marine site characterization survey activities, specifically HRG surveys, have the potential to result in incidental take of marine mammals in the form of Level B harassment.

Dates and Duration

The proposed surveys are planned to begin no earlier than June 1, 2023 and estimated to require 293 survey days within a single year across a maximum of three vessels operating concurrently, which would include up to two vessels operating offshore (≤20 meters (m) depth) and one vessel operating nearshore (<20 m depth). The survey days are proposed to occur any month throughout the year as the exact timing of the surveys during the year is not yet certain. A ''survey day'' is defined as a 24-hour (hr) activity period in which active acoustic sound sources are used offshore and a 12-hr activity period when a vessel is operating nearshore. It is expected that each offshore vessel would cover approximately 170 kilometers (km) of trackline per day surveyed at a speed of approximately 3.8 knots (kn; 7.04 km/h), based on COSW's expectations regarding data acquisition efficiency. There is up to 30,467 km of trackline survey effort planned: a maximum trackline length of 28,290 km is planned for the Lease Area and 2,177 km for the ECR Area. The IHA would be effective for 1 year from the date of issuance.

Specific Geographic Region

COSW's survey activities would occur in coastal waters off of New Jersey and New York in the New York Bight, specifically within BOEM Lease Area OCS–A 0539 and associated ECR Area (Figures 1, 2). The Survey Area (14,759 km^2) includes both the Lease Area (859 km^2; 30–51 m depth) and ECR Area (13,900 km^2; 3–65 m depth).

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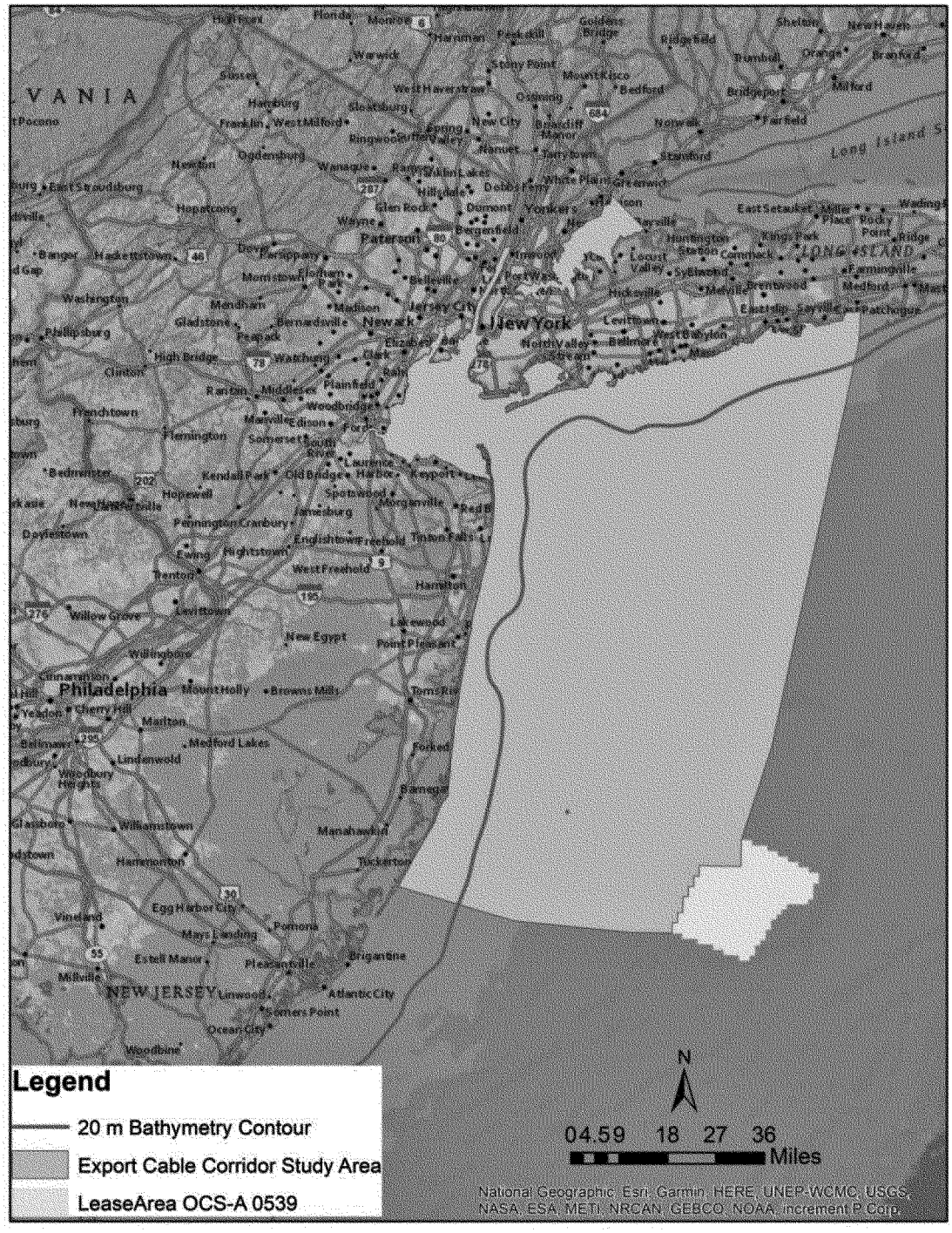

Figure 1 – Proposed Survey Area

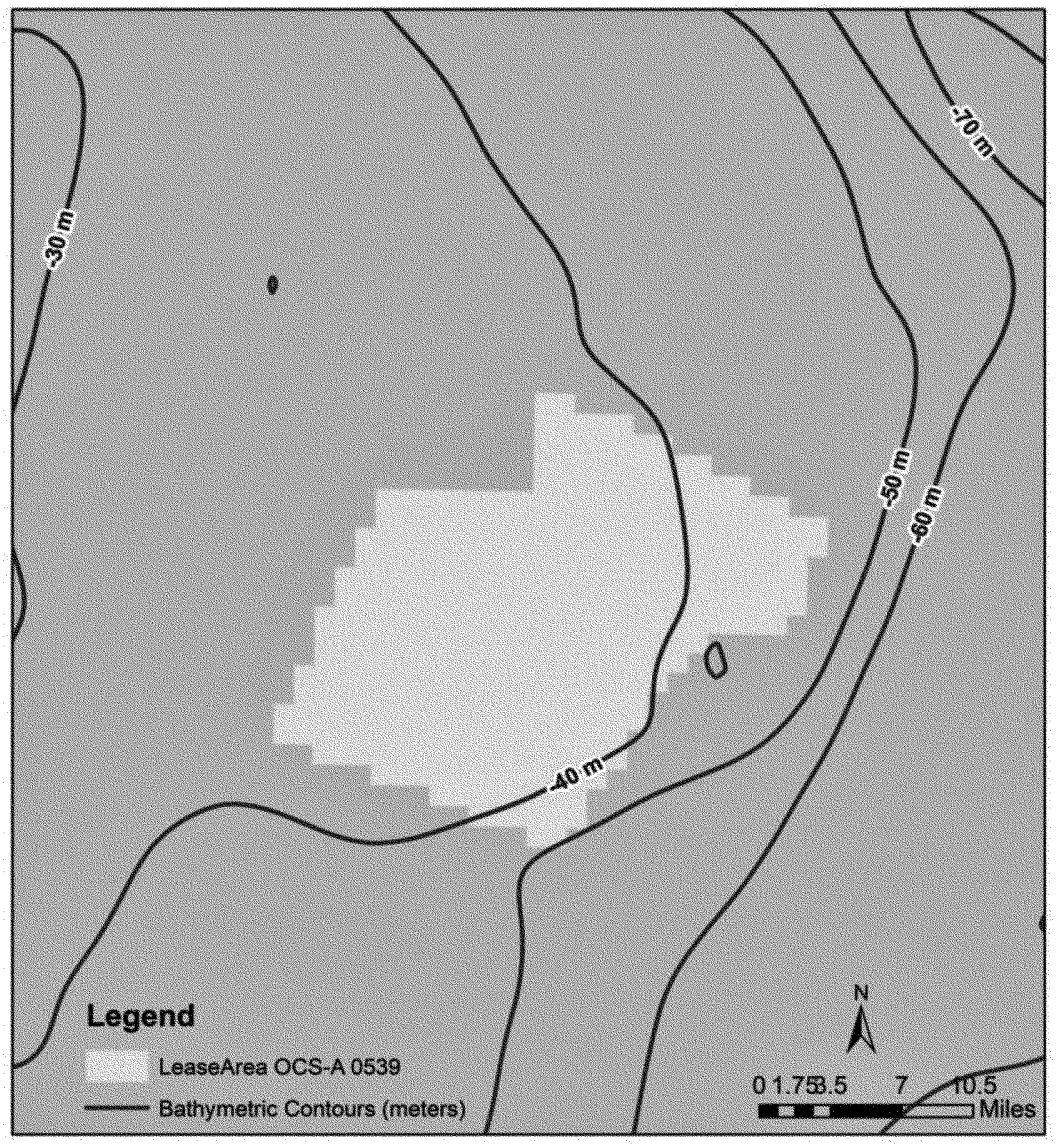

Figure 2 – Proposed Survey Area with Bathymetric Contours Showing Water Depth

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Detailed Description of the Specified Activity

COSW's marine site characterization surveys within the Survey Area include geotechnical and geophysical surveys, including depth sounding to determine water depth, site bathymetry, and general seafloor topography using a multibeam echosounder (MBES); and medium penetration sub-bottom profilers (SBP; sparkers) in a single (2-dimensional (2D)) or triple (3-dimensional (3D)) configuration.

Within the Lease Area and across a 500 m buffer around the Lease Area (30–51 m depth), COSW will acquire MBES data and ultra-high resolution seismic (UHRS) data in either 2D (single sparker) or 3D (triple sparker) scenario. Within the ECR Area (3–65 m depth), the survey will consist of MBES and UHRS data collection within up to 900 m wide corridors. A centerline of UHRS data will be collected with 500 m tielines. COSW would acquire MBES data at a line spacing controlled by water depth to meet coverage and resolution requirements. MBES are used to determine water depths and general bottom topography. The proposed MBES have operating frequencies greater than 180 kilohertz (kHz) and are therefore outside the general hearing range of marine mammals. NMFS does not expect MBES survey activities to present a reasonably anticipated risk of causing incidental take of marine mammals, so these activities are not discussed further in this notice.

COSW proposes two scenarios: the 2D scenario and the 3D scenario. The total survey trackline length differs between the 2D and 3D scenarios but both scenarios include a maximum of two concurrently-operating vessels in the Lease Area with the potential for a third vessel operating concurrently in the ECR Area. For the 2D scenario, a trackline length of 5,370 km (1,515 km^2 ensonified area) is planned for the Lease Area and 2,177 km (615 km^2 ensonified area) for the ECR Area. Each vessel would operate one sparker in the 2D scenario. Under the 3D scenario, a trackline length of 28,290 km (8,923 km^2 ensonified area) is planned for the Lease Area and 2,177 km (688 km^2

ensonified area) for the ECR Area. Each vessel would operate three sparkers in the 3D scenario. The ECR Area trackline length remains the same across both scenarios. Only one vessel would operate in nearshore waters <20 m depth and would adhere to a 12-hr survey day.

The only acoustic sources planned for use by COSW during HRG survey activities with the potential to cause incidental take of marine mammals are the sparkers. Sparkers are medium penetration impulsive sources used to map deep subsurface stratigraphy (soils down to at least 100 m (328 ft) below the seabed in sand and at least 125 m (410 ft) below the seabed in mixed sediments). Sparkers create omnidirectional acoustic pulses from 50 hertz (Hz) to 4 kHz, are typically towed behind the vessel, and may be operated with different numbers of electrode tips to allow tuning of the acoustic waveform for specific applications. There are two sparker systems planned for use: Applied Acoustics Dura-Spark UHD 400+400 Seismic Sound Source (400 tip/300–1,000 Joules (J)) and the Geo-Source 200–400 Marine Multi-Tip Sparker System (400 tip/300–1,000 J).

Crocker and Fratantonio (2016) measured the Applied Acoustics Dura-Spark but did not provide data for an energy setting near 1,000 J for a 400-tip configuration (Crocker and Fratantonio (2016) provide measurements at 500 and 2,000 J). No data are provided by Crocker and Fratantonio (2016) for the Geo-Source sparker system. Therefore, COSW proposes to use the data provided for the Applied Acoustics Dura-Spark at the 500 J setting as a proxy for both sparker systems as it is the closest match for both due to the similarities in composition and operation, with both employing up to 400 electrode tips. NMFS concurs with these selections, which are described in Table 1.

The only acoustic sources planned for use during HRG survey activities proposed by the applicant with expected potential to cause incidental take of marine mammals are the sparkers. Therefore, we will only be discussing further equipment that has the potential to harass marine mammals and is listed below in Table 1. For equipment source level specifications noted in Table 1, a proxy representing the closest match in composition and operation of the Applied Acoustics Dura-Spark UHD and Geo-Source Marine was used from Crocker and Fratantonio (2016).

COSW proposes to use the same equipment over the entire Survey Area and has requested authorization of take based on the assumption that the 3D scenario, using either sparker system as both produce the same distance to the 160 dB root-mean-squared (RMS) sound pressure level (SPL) threshold for acoustic impacts, would occur during all survey effort (see Table 1–3 and Section 6.1 in application).

TABLE 1—REPRESENTATIVE SURVEY EQUIPMENT EXPECTED TO RESULT IN TAKE OF MARINE MAMMALS

Equipment type	Equipment make/model	Operating frequency (kHz)	Source level (SPL dB re 1 µPa @1 m)	Source level (Peak dB re 1 µPa @1 m)	Sound exposure level (dB re 1 µPa²*s)	Reference	Pulse duration (ms)	Repetition rate (Hz)	Beam width (degrees)
Medium SBP	Applied Acoustics Dura-Spark UHD 400+400 (400 tip/300–1,000 J).	0.3–1.2	203	211	174	Crocker and Fratantonio, 2016	1.1	4	180
Medium SBP	Geo-Source 200–400 Marine Multi-Tip Sparker System (400 tip/300–1,000 J).	0.1–4.0	203	211	174	Crocker and Fratantonio, 2016	1.1	4	180

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the species or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All MMPA managed stocks in this region are assessed in NMFS' U.S. Atlantic and Gulf of Mexico SARs. All values presented in Table 2 are the most recent available at the time of publication (including from the draft 2022 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 2—SPECIES AND STOCKS LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
Family Balaenidae:						
North Atlantic right whale.	*Eubalaena glacialis*	Western North Atlantic.	E/D; Y	338 (0; 332; 2020)	0.7	8.1
Family Balaenopteridae (rorquals):						
Fin whale	*Balaenoptera physalus.*	Western North Atlantic.	E/D; Y	6,802 (0.24; 5,573, 2016)	11	1.8
Humpback whale.	*Megaptera novaeangliae.*	Gulf of Maine	-/-; Y	1,396 (0; 1,380; 2016)	22	12.15
Minke whale	*Balaenoptera acutrostrata.*	Canadian East Coastal.	-/-; N	21,968 (0.31; 17,002; 2016)	170	10.6
Sei whale	*Balaenoptera borealis.*	Nova Scotia	E/D; Y	6,292 (1.02; 3,098; 2016)	6.2	0.8
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale ...	*Physeter macrocephalus.*	North Atlantic	E/D; Y	4,349 (0.28; 3,451; 2016)	3.9	0
Family Delphinidae:						
Atlantic spotted dolphin.	*Stenella frontalis*	Western North Atlantic.	-/-; N	39,921 (0.27; 32,032; 2016)	320	0
Atlantic white-sided dolphin.	*Lagenorhynchus acutus.*	Western North Atlantic.	-/-; N	93,233 (0.71;54,443; 2016)	544	27
Bottlenose dolphin.	*Tursiops truncatus*	Western North Atlantic, Offshore.	-/-; N	62,851 (0.23; 51,914; 2016)	519	28
Bottlenose dolphin.	*Tursiops truncatus*	Western North Atlantic, Northern Migratory Coastal.	–/D; Y	6,639 (0.41; 4,759; 2016)	48	12.2–21.5
Long-finned pilot whale.	*Globicephala melas*	Western North Atlantic.	-/-; N	39,215 (0.3; 30,627; 2016)	306	9
Risso's dolphin	*Grampus griseus* ...	Western North Atlantic.	-/-; N	35,215 (0.19; 30,051; 2016)	301	34
Common dolphin.	*Delphinus delphis* ..	Western North Atlantic.	-/-; N	172,974 (0.21; 145,216; 2016)	1,452	390
Family Phocoenidae (porpoises):						
Harbor porpoise.	*Phocoena*	Gulf of Maine/Bay of Fundy.	-/-; N	95,543 (0.31; 74,034; 2016)	851	164
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals):						
Gray seal [5]	*Halichoerus grypus*	Western North Atlantic.	-/-; N	27,300 (0.22; 22,785; 2016)	1,389	4,453
Harbor seal	*Phoca vitulina*	Western North Atlantic.	-/-; N	61,336 (0.08; 57,637; 2018)	1,729	329

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/;* Committee on Taxonomy (2022)).

[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[5] NMFS's stock abundance estimate (and associated PBR value) applies to the U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600. The annual M/SI given is for the total stock.

As indicated above, all 15 species (16 stocks) in Table 2 temporally and spatially co-occur with the proposed activity to the degree that take is reasonably likely to occur. While other species have been documented in the area (see Table 3–1 of the IHA application), the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here.

North Atlantic Right Whale

North Atlantic right whales (NARW) range from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2018). They are observed year round in the Mid-Atlantic Bight, and surveys have demonstrated the existence of seven areas where NARWs congregate seasonally in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2018). In the late fall months (*e.g.,* October), NARWs are generally thought

to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round NARW presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017). Given that COSW's surveys would be concentrated offshore in the New York Bight, some NARWs may be present year round. However, the majority of NARWs in the vicinity of the survey areas are likely to be transient, migrating through the area.

Recent aerial surveys in the New York Bight showed NARW in the proposed survey area in the winter and spring, preferring deeper waters near the shelf break (NARW observed in depths ranging from 33—1041 m) but were observed throughout the survey area (Zoidis *et al.,* 2021, Robinson *et al.,* 2021). Similarly, passive acoustic data collected from 2018 to 2020 in the New York Bight showed detections of NARW throughout the year (Estabrook *et al.,* 2021). Seasonally, NARW acoustic presence was highest in the fall. NARW can be anticipated to occur in the proposed survey area year-round but with lower levels in the summer from July–September.

Since 2010, the NARW population has been in decline (Pace III *et al.,* 2017), with a 40 percent decrease in calving rate (Kraus *et al.,* 2016). In 2018, no new NARW calves were documented in their calving grounds; this represented the first time since annual NOAA aerial surveys began in 1989 that no new NARW calves were observed. Calf numbers have increased since 2018 with 20 NARW calves documented in 2021 and 15 in 2022.

Elevated NARW mortalities have occurred since June 7, 2017, along the U.S. and Canadian coast. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 60 of the mortalities or serious injuries thus far. As of April 4, 2023, a total of 98 confirmed cases of mortality, serious injury, or morbidity (sublethal injury or illness) have been documented. The preliminary cause of most of these cases is from rope entanglements or vessel strikes. More information is available online at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-north-atlantic-right-whale-unusual-mortality-event.*

The proposed survey area is within a migratory corridor Biologically Important Area (BIA) for NARWs that extends from Massachusetts to Florida (LaBrecque *et al.,* 2015). There is possible migratory behavior that could occur in this area between November and April. Off the coast of New Jersey, the migratory BIA extends from the coast to beyond the shelf break.

NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for NARWs in 2008. SMAs were developed to reduce the threat of collisions between ships and NARWs around their migratory route and calving grounds. The New York/New Jersey SMA, which occurs in the New York Bight, is in the proposed survey area and is active from November 1 through April 30 of each year. Within SMAs, the regulations require a mandatory vessel speed (<10 kn) or 5.14 meters-per-second (m/sec) for all vessels longer than 65 ft (19.8 m).

On August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization would remain in place. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify COSW if the measures in the speed rule were to supersede any of the measures in the MMPA authorization such that they were no longer applicable.

Fin Whale

Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year (Waring *et al.,* 2016). They are typically found in small groups of up to five individuals (Brueggeman *et al.,* 1987). The main threats to fin whales are fishery interactions and vessel collisions (Waring *et al.,* 2016).

The western north Atlantic stock of fin whales includes the area from Central Virginia to Newfoundland/Labrador Canada. This region is primarily a feeding ground for this migratory species that tend to calve and breed in lower latitudes or offshore. There is currently no critical habitat designated for this species.

Aerial surveys in the New York Bight observed fin whales year-round throughout the survey area, but they preferred deeper waters near the shelf break (Robinson *et al.,* 2021). Passive acoustic data from 2018 to 2020 also detected fin whales throughout the year (Estabrook *et al.,* 2021).

Humpback Whale

On September 8, 2016, NMFS divided the once single species of humpback whales into 14 distinct population segments (DPS),[1] removed the current species-level listing, and, instead, listed four DPSs as endangered and one DPS as threatened (81 FR 62259, September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whale that is expected to occur in the survey area. Members of the West Indies DPS disperse to multiple western North Atlantic feeding populations, including the Gulf of Maine stock designated under the MMPA. Whales occurring in the project area are considered to be from the West Indies DPS but are not necessarily from the Gulf of Maine stock. Barco *et al.* (2002) estimated that, based on photo-identification, only 39 percent of individual humpback whales observed along the mid- and south Atlantic U.S. coast are from the Gulf of Maine stock. Bettridge *et al.* (2015) estimated the size of this population at 12,312 (95 percent CI 8,688–15,954)

[1] Under the Endangered Species Act, in 16 U.S.C. 1532(16), a distinct population segment (or DPS) is a vertebrate population or group of populations that is discrete from other populations of the species and significant in relation to the entire species. NOAA Fisheries and the US Fish and Wildlife Service released a joint statement on February 7, 1996 (61 FR 4722) that defines the criteria for identifying a population as a DPS.

whales in 2004–05, which is consistent with previous population estimates of approximately 10,000–11,000 whales (Stevick *et al.,* 2003, Smith *et al.,* 1999) and the increasing trend for the West Indies DPS (Bettridge *et al.,* 2015).

Humpback whales utilize the mid-Atlantic as a migration pathway between calving/mating grounds to the south and feeding grounds in the north (Waring *et al.,* 2007a, Waring *et al.,* 2007b). A key question with regard to humpback whales off the Mid-Atlantic States is to which feeding population whales in these waters belong.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. Partial or full necropsy examinations have been conducted on approximately half of the 191 known cases (as of April 4, 2023). Of the whales examined, about 40 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2016-2023-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Waring *et al.,* 2016). This species generally occupies waters <100-m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in the survey areas, in which spring to fall are times of relatively widespread and common occurrence while during winter the species appears to be largely absent (Waring *et al.,* 2016). Aerial surveys in the New York Bight area found that minke whales were observed throughout the survey area with highest numbers sighting in the spring months (Robinson *et al.,* 2021).

Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina, with a total of 142 strandings (as of March 23, 2023). This event has been declared a UME; as of 2023, it is pending closure. Full or partial necropsy examinations were conducted on more than 60 percent of the stranded whales. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2023-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland. Sei whales occur in shallower waters to feed. Currently there is no critical habitat for sei whales, though they can be observed along the shelf edge of the continental shelf. The main threats to this stock are interactions with fisheries and vessel collisions.

Aerial surveys conducted in the New York Bight observed sei whales in both winter and spring, though they preferred deeper waters near the shelf break (Robinson *et al.,* 2021). Passive acoustic data in the survey area detected sei whales throughout the year except January and July with highest detections in March and April (Estabrook *et al.,* 2021).

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.,* 2014). They are rarely found in waters <300 m deep. The basic social unit of the sperm whale appears to be the mixed school of adult females, their calves, and some juveniles of both sexes, normally numbering 20–40 animals. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). In summer, the distribution of sperm whales includes the area northeast of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whales occur south of New England on the continental shelf at its highest level. In winter, sperm whales are concentrated east and northeast of Cape Hatteras, North Carolina.

Aerial studies in the New York Bight observed sperm whales in the highest number in the summer, with a preference for the shelf break (Robinson *et al.,* 2021). Passive acoustic recordings of sperm whale recorded them throughout the year, and again highest during spring and summer (Estabrook *et al.,* 2021).

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to the Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). The Western North Atlantic stock regularly occur in continental shelf waters south of Cape Hatteras, North Carolina and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014).

Atlantic White-Sided Dolphin

White-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2016). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire) with even lower numbers south of Georges Bank as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann, 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities. Aerial studies confirmed observations in fall and winter in the New York Bight area with preference for deep water at the shelf break throughout the year (Robinson *et al.,* 2021).

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes in the Western North Atlantic: Western North Atlantic Northern Migratory Coastal Stock (coastal stock) and the Western North Atlantic Offshore Stock (offshore stock; Waring *et al.,* 2016). The coastal stock resides in waters typically <20 m deep, along the inner continental shelf (within 7.5 km (4.6 miles) of shore), around islands, and is continuously distributed

south of Long Island, New York into the Gulf of Mexico. Torres *et al.* (2003) found a statistically significant break in the distribution of the ecotypes at 34 km from shore based upon the genetic analysis of tissue samples collected in nearshore and offshore waters from New York to central Florida. The offshore stock was found exclusively seaward of 34 km and in waters deeper than 34 m (Hayes *et al.,* 2018, Hayes *et al.,* 2017). The offshore stock is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys. Both stocks of bottlenose dolphins are likely to occur in the proposed survey area. These two stocks are considered geographically separated by the 20 m depth contour with the Coastal Stock found in waters <20 m and the Offshore Stock in waters greater than 20 m.

Long-Finned Pilot Whale

Only long-finned pilot whales are reasonably expected to occur in this project area due to their more northerly distribution and association with colder water compared to short-finned pilot whales (Garrison and Rosel, 2017). Long-finned pilot whales are found from North Carolina to Iceland, Greenland, and the Barents Sea (Waring *et al.,* 2016). In U.S. Atlantic waters, the Western North Atlantic stock is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring. In late spring, pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016).

Risso's Dolphin

The Western North Atlantic stock of Risso's dolphin occurs from Florida to eastern Newfoundland. They are common on the northwest Atlantic continental shelf in summer and fall with lower abundances in winter and spring. Aerial surveys in the New York Bight area sighted Risso's dolphins throughout the year at the shelf break with highest abundances in spring and summer (Robinson *et al.,* 2021).

Common Dolphin

Common dolphins within the U.S. Atlantic EEZ belong to the Western North Atlantic stock, generally occurring from Cape Hatteras to the Scotian Shelf (Hayes *et al.,* 2021). Common dolphins are a highly seasonal, migratory species. Within the U.S. Atlantic EEZ, this species is distributed along the continental shelf and typically associated with Gulf Stream features (Hayes *et al.,* 2021, CETAP, 1982, Hamazaki, 2002, Selzer and Payne, 1988). They are commonly found over the continental shelf between the 100 m and 2,000 m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016). Common dolphins occur from Cape Hatteras northeast to Georges Bank (35° to 42° N) during mid-January to May and move as far north as the Scotian Shelf from mid-summer to fall (Selzer and Payne, 1988). Migration onto the Scotian Shelf and continental shelf off Newfoundland occurs when water temperatures exceed 51.8 ° Fahrenheit (11 ° Celsius) (Sergeant *et al.,* 1970, Gowans and Whitehead, 1995). Breeding usually takes place between June and September (Hayes *et al.,* 2019). Kraus *et al.* (2016) observed 3,896 individual common dolphins within the Rhode Island/Massachusetts Wind Energy Area. Summer surveys included observations of the most individuals followed by fall, winter, and then spring.

Harbor Porpoise

In the project area, only the Gulf of Maine/Bay of Fundy stock of harbor porpoises may be present in the fall and winter. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters <150 m deep (Waring *et al.,* 2016). During fall (October–December) and spring (April–June), they are more widely dispersed from New Jersey to Maine with lower densities farther north and south. In winter (January–March), intermediate densities of harbor porpoises can be found in waters off New Jersey to North Carolina with lower densities found in waters off New York to New Brunswick, Canada (Hayes *et al.,* 2020). They are seen from the coastline to deep waters (>1,800 m) (Westgate and Read, 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2016). The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2016).

Pinnipeds (Gray Seal and Harbor Seal)

Gray seals are regularly observed in the survey area and these seals belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador Sea. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2016). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2016). It is believed that recolonization by Canadian gray seals is the source of the U.S. population increase (Waring *et al.,* 2016). Documented haulouts for gray seals exist in the Long Island area, with a possible rookery on Little Gull Island.

Since June 2022, elevated numbers of sick and dead harbor seal and gray seal have been documented along the southern and central coast of Maine. This event has also been declared an UME. Preliminary testing of samples found that some harbor and gray seals were positive for the highly pathogenic avian influenza. NMFS and other partners are working on an ongoing investigation of this UME. From June 1, 2022–February 19, 2023 there have been 337 seal strandings. Information on these UMEs are available online at: *https://www.fisheries.noaa.gov/2022-2023-pinniped-unusual-mortality-event-along-maine-coast.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* (Richardson *et al.,* 2005, Wartzok and Ketten, 1999, Au and Hastings, 2008)). To reflect this, Southall *et al.* (2007), Southall *et al.* (2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, etc.). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales).	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales).	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals).	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals).	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006, Kastelein *et al.,* 2009, Reichmuth *et al.,* 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. Detailed descriptions of the potential effects of similar specified activities have been provided in other recent **Federal Register** notices, including for survey activities using the same methodology, over a similar amount of time, and occurring in the mid-Atlantic region, including the New York Bight (*e.g.,* 87 FR 38094, June 27, 2022; 87 FR 51359, August 22, 2022). No significant new information is available, and we incorporate by reference the detailed discussions in those documents rather than repeating the details here.

The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Summary on Specific Potential Effects of Acoustic Sound Sources

For general information on sound, its interaction with the marine environment, and a description of acoustic terminology, please see, *e.g.,* ANSI (1986), ANSI (1995), Au and Hastings (2008), Hastings and Popper (2005), Mitson (1995), NIOSH (1998), Richardson *et al.* (2005), Southall *et al.* (2007), Urick (1983). Underwater sound from active acoustic sources can cause one or more of the following: temporary or permanent hearing impairment, behavioral disturbance, masking, stress, and non-auditory physical effects. The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS; permanent threshold shift), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS; temporary threshold shift), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* (Ward, 1997)). Therefore, NMFS does not consider TTS to constitute auditory injury.

Animals in the vicinity of COSW's proposed HRG survey activities are unlikely to incur even TTS due to the characteristics of the sound sources, which include generally very short pulses and potential duration of exposure. These characteristics mean that instantaneous exposure is unlikely to cause TTS because it is unlikely that exposure would occur close enough to the vessel for received levels to exceed peak pressure TTS criteria, and the cumulative duration of exposure would be insufficient to exceed cumulative sound exposure level (SEL) criteria. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which have the greatest sensitivity to potential TTS, individuals would have to make a very close approach and remain very close to the vessel operating these sources in order to receive multiple exposures at relatively high levels as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range.

Behavioral disturbance to marine mammals from sound may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal.

In addition, sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection,

predator avoidance, navigation). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. Marine mammal communications would not likely be masked appreciably by the acoustic signals given the directionality of the signals for the HRG survey equipment planned for use (Table 1) and the brief period for when an individual mammal would likely be exposed.

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, and zooplankton) (*i.e.,* effects to marine mammal habitat). Prey species exposed to sound might move away from the sound source, experience TTS, experience masking of biologically relevant sounds, or show no obvious direct effects. The most likely impacts, if any, for most prey species in a given area would be temporary avoidance of the area. Surveys using active acoustic sound sources move through an area, limiting exposure to multiple pulses. In all cases, sound levels would return to ambient once a survey ends and the noise source is shut down and, when exposure to sound ends, behavioral and/or physiological responses are expected to end relatively quickly. Finally, the HRG survey equipment will not have significant impacts to the seafloor and does not represent a source of pollution.

Vessel Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. These interactions are typically associated with large whales, which are less maneuverable than are smaller cetaceans or pinnipeds in relation to large vessels. Ship strikes generally involve commercial shipping vessels, which are normally larger and of which there is much more traffic in the ocean than geophysical survey vessels. Jensen *et al.* (2003) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). For vessels used in geophysical survey activities, vessel speed while towing gear is typically only 4–5 kn (2.1–2.6 m/s). At these speeds, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are so low as to be discountable. At average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is <50 percent. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds. Notably in the Jensen and Silber study, no strike incidents were reported for geophysical survey vessels during that time period.

The potential effects of COSW's specified survey activity are expected to be limited to Level B behavioral harassment. No permanent or temporary auditory effects or significant impacts to marine mammal habitat, including prey, are expected.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sound produced by the sparkers. Based on the characteristics of the signals produced by the acoustic sources planned for use, Level A harassment is neither anticipated (even absent mitigation) nor proposed to be authorized. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* (Ellison *et al.,* 2012, Southall *et al.,* 2007, Southall *et al.,* 2021)). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above RMS SPL of 120 dB (referenced to 1 microPascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential

reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

COSW's marine site characterization surveys include the use of impulsive (*i.e.,* sparker) sources, and therefore the RMS SPL threshold of 160 dB re 1 μPa is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive).

The references, analysis, and methodology used in the development of the thresholds are described in NMFS (2018) Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

COSW's marine site characterization surveys include the use of impulsive (*i.e.,* sparker) sources. However, as discussed above, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources proposed for use here, and the potential for Level A harassment is not evaluated further in this document. Please see COSW's application for details of a quantitative exposure analysis exercise (*i.e.,* calculated Level A harassment isopleths and estimated Level A harassment exposures). COSW did not request authorization of take by Level A harassment, and no take by Level A harassment is proposed for authorization by NMFS.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

NMFS has developed a user-friendly methodology for estimating the extent of the Level B harassment isopleths associated with relevant HRG survey equipment (NMFS, 2020). This methodology incorporates frequency and directionality (when relevant) to refine estimated ensonified zones. For acoustic sources that operate with different beamwidths, the maximum beamwidth was used, and the lowest frequency of the source was used when calculating the frequency-dependent absorption coefficient (Table 1). COSW used 180-degree beamwidth in the calculation for the proposed sparker as is appropriate for an omnidirectional source.

NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG survey equipment and, therefore, recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to harassment thresholds. In cases where the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 1 shows the HRG equipment type used during the planned surveys and the source levels associated with those HRG equipment types.

COSW proposed to use the Applied Acoustics Dura-Spark UHD 400+400 (400 tip/300–1000 J) and the Geo-Source 200–400 Marine Multi-tip Sparker System (400 tip/300–1000 J). For all source configurations (Table 1), the maximum power expected to be discharged from the sparker source is 1,000 J. However, Crocker and Fratantonio (2016) did not measure the Dura-Spark with an energy of 1,000 J, only 500 J, 2,000 J, and 2,400 J, so the source level values for 500 J (provided in Table 10 of Crocker and Fratantonio (2016)) were used as a proxy, as this setting was anticipated to be more representative of the application of the equipment than the next level reported for 2,000 J. The Applied Acoustics Dura-Spark was also used as a proxy for the Geo-Source 200–400 Marine Multi-tip Sparker System (400 tip/300–1000 J). Using the measured source level of 203 dB RMS SPL of the proxy, results of modeling indicated that both sparkers would produce an estimated distance of 141 m to the Level B harassment isopleth.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment proposed for use by the applicant (Table 1) that has the potential to result in Level B harassment of marine mammals, both systems would produce the same distance to the Level B harassment isopleth (141 m).

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, Roberts and Halpin, 2022) represent the best available information regarding marine mammal densities in the proposed survey area. These density data incorporate aerial and shipboard line-transect survey data from NMFS and other organizations and incorporate data from numerous physiographic and dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic in 2016 and models for all taxa were updated in 2022 (Roberts *et al.,* 2016, Roberts and Halpin, 2022). More information is available online at *https://seamap.env.duke.edu/models/Duke/EC/.* Marine mammal density estimates in the survey area (animals/km^2) were obtained using the most recent model results for all taxa.

For the exposure analysis, density data from Roberts and Halpin (2022) were mapped using a geographic information system (GIS). For the survey area, the monthly densities of each species as reported by Roberts and Halpin (2022) were averaged by season; thus, a density was calculated for each species for spring, summer, fall, and winter. Density seasonal averages were calculated for both the Lease Area and the ECR Area for each species to assess the greatest average seasonal densities for each species. To be conservative since the exact timing for the survey during the year is uncertain, the greatest average seasonal density calculated for each species was carried forward in the exposure analysis, with exceptions noted later in this discussion. Estimated greatest average seasonal densities (animals/km^2) of marine mammal species that may be taken incidental to the planned survey can be found in Tables 6–1 and 6–2 of COSW's IHA application. Below, we discuss how densities were assumed to apply to specific species for which the Roberts and Halpin (2022) models provide results at the genus or guild level.

There are two stocks of bottlenose dolphins that may be impacted by the surveys (Western North Atlantic Northern Migratory Coastal Stock

(Coastal Stock) and Western North Atlantic Offshore Stock (Offshore Stock)), however, Roberts and Halpin (2022) do not differentiate by stock. The Coastal Stock is assumed to generally occur in waters <20 m (65 ft) and the Offshore Stock in waters deeper than 20 m (65 ft) isobath. The Lease Area is in waters >20 m (65 ft) depth and only the Offshore Stock would occur and potentially be taken by survey effort in that area. Both stocks could occur in the ECR Area, so COSW calculated separate mean seasonal densities for the portion that is <20 m depth and for the portion that is >20 m depth to use for estimating take of the Coastal and Offshore Stocks of bottlenose dolphins, respectively.

Furthermore, the Roberts and Halpin (2022) density model does not differentiate between the different pinniped species. For seals, given their size and behavior when in the water, seasonality, and feeding preferences, there is limited information available on species-specific distribution. Density estimates from Roberts and Halpin (2022) include all seal species that may occur in the Western North Atlantic combined (*i.e.,* gray, harbor, harp, hooded). For this IHA, only gray seals and harbor seals are reasonably expected to occur in the survey area; densities of seals were split evenly between these two species.

Finally, the Roberts and Halpin (2022) density model does not differentiate between pilot whale species. While the exact latitudinal ranges of the two species are uncertain, only long-finned pilot whales are expected to occur in this project area due to their more northerly distribution and tolerance of shallower, colder shelf waters (Hayes *et al.,* 2022). We assume that all pilot whales near the project area would be long-finned pilot whales due to their range overlapping and short-finned pilot whales are not anticipated to occur as far north as the survey area (Garrison and Rosel, 2017). For this IHA, densities of pilot whales are assumed to be only long-finned pilot whale.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to Level B harassment thresholds were calculated, as described above. The distance (*i.e.,* 141 m distance associated with both sparker systems) to the Level B harassment criterion and the total length of the survey trackline were then used to calculate the total ensonified area, or harassment zone, around the survey vessel.

COSW proposes to conduct HRG surveys for a maximum total of 30,467 km trackline length, of which a maximum of 28,290 km are in the Lease Area and 2,177 km are in the ECR Area. Of the ECR Area trackline, 400 km are in waters <20 m depth. COSW is requesting take based on the 3D scenario as it results in the largest estimated harassment zone based on the proposed equipment configuration, trackline distance, and resulting ensonified area. The 3D scenario would use a three sparker array with 400 tips (either GeoSource 200–400 or Applied Acoustics Dura-Spark UHD) activating sequentially 750 milliseconds apart, so the Harassment Zone was modeled for each sparker and allowed for up to the maximum proposed 16.7 m spacing between each sparker (see Figure 6–2 in the application). Based on this, the distance to Level B harassment threshold from the center line of the 3D scenario survey was estimated to be 157.7 m (R). Based on the maximum estimated distance to the Level B harassment threshold and maximum total survey length, the total ensonified area is 9,611 km^2 (8,923 km^2 Lease Area and 688 km^2 ECR Area), based on the following formula, where the total estimated trackline length (L) in each area was used and buffered with the horizontal distance to the Level B harassment threshold (R) for the 3D scenario to determine the total area ensonified to 160 dB RMS SPL.

$$Harassment\ Zone = (L \times 2R) + \pi R^2$$

This is a conservative estimate as it assumes the scenario that results in the greatest distance to the Level B harassment threshold (3D scenario) would be operated at all times during the entire survey, which may not ultimately occur.

The number of marine mammals expected to be incidentally taken during the total survey is then calculated by estimating the number of each species predicted to occur within the ensonified area (animals/km^2), incorporating the greatest seasonal estimated marine mammal densities as described above. The product is then rounded to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey (up to 293 days). A summary of this method is illustrated in the following formula, where the Harassment Zone is multiplied by the highest seasonal mean density (D) of each species or stock (animals/km^2; except for pilot whales where annual density was used based on data availability).

$$Estimated\ Take = Harassment\ Zone \times D$$

The resulting take of marine mammals (Level B harassment) shown in Table 4.

TABLE 4—ESTIMATED TAKE NUMBERS AND TOTAL TAKE PROPOSED FOR AUTHORIZATION

Species	Estimated take—lease area	Estimated take—ECR area	Total take proposed to be authorized	Percent of abundance [1]
North Atlantic right whale	23	1	24	6.8
Humpback whale	44	2	46	0.4
Fin whale	73	3	76	1.1
Sei whale	23	1	24	0.4
Minke whale	286	18	304	1.4
Sperm whale	10	0	10	0.1
Risso's dolphin	57	2	59	0.2
Long-finned pilot whale	77	1	78	0.2
Atlantic white-sided dolphin	409	18	427	0.5
Common dolphin	5,431	141	5,572	3.2
Atlantic spotted dolphin	315	5	320	0.8
Harbor porpoise	1,807	105	1,912	2
Common bottlenose dolphin (Offshore Stock)	1,212	104	1,316	2.1
Common bottlenose dolphin (Northern Migratory Coastal Stock)	0	115	115	1.7
Gray seal	1,764	191	1,955	[2] 0.4

TABLE 4—ESTIMATED TAKE NUMBERS AND TOTAL TAKE PROPOSED FOR AUTHORIZATION—Continued

Species	Estimated take—lease area	Estimated take—ECR area	Total take proposed to be authorized	Percent of abundance [1]
Harbor seal	1,764	191	1,955	2.1

Note: take requests are all greater than average group size (see Appendix C of application).
[1] Based on the 2022 draft marine mammal stock assessment reports (SAR).
[2] This abundance estimate is based on the total stock abundance (including animals in Canada). The NMFS stock abundance estimate for US population is only 27,300.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and,

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

NMFS proposes that the following mitigation measures be implemented during COSW's planned marine site characterization surveys. Pursuant to section 7 of the ESA, COSW would also be required to adhere to relevant Project Design Criteria (PDC) of the NMFS' Greater Atlantic Regional Fisheries Office (GARFO) programmatic consultation (specifically PDCs 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast (*https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation*).

Visual Monitoring and Shutdown Zones

COSW must employ independent, dedicated, trained protected species observers (PSOs), meaning that the PSOs must (1) be employed by a third-party observer provider, (2) have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and (3) have successfully completed an approved PSO training course appropriate for geophysical surveys. Visual monitoring must be performed by qualified, NMFS-approved PSOs. PSO resumes must be provided to NMFS for review and approval prior to the start of survey activities.

During survey operations (*e.g.,* any day in which use of the sparker source is planned to occur, and whenever the sparker source is in the water, whether activated or not), a minimum of one visual marine mammal observer (PSO) must be on duty on each source vessel and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes (min) prior to sunrise through 30 min following sunset). A minimum of two PSOs must be on duty on each source vessel during nighttime hours. Visual monitoring must begin no less than 30 min prior to ramp-up (described below) and must continue until 1 hr after use of the sparker source ceases.

Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs shall establish and monitor applicable shutdown zones (see below). These zones shall be based upon the radial distance from the sparker source (rather than being based around the vessel itself).

Two shutdown zones are defined, depending on the species and context. Here, an extended shutdown zone encompassing the area at and below the sea surface out to a radius of 500 m from the sparker source (0–500 m) is defined for NARW. For all other marine mammals, the shutdown zone encompasses a standard distance of 100 m (0–100 m) during the use of the sparker. Any observations of marine mammals by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hr between watches and may conduct a maximum of 12 hr of observation per 24-hr period.

Pre-Start Clearance and Ramp-Up Procedures

A ramp-up procedure, involving a gradual increase in source level output, is required at all times as part of the activation of the sparker sources when technically feasible. Operators should ramp up sparker to half power for 5 min and then proceed to full power. A 30 min pre-start clearance observation period of the shutdown zones must occur prior to the start of ramp-up. The intent of the pre-start clearance observation period (30 min) is to ensure no marine mammals are within the shutdown zones prior to the beginning of ramp-up. The intent of the ramp-up is to warn marine mammals of pending operations and to allow sufficient time for those animals to leave the immediate vicinity. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 min prior to the planned ramp-up in order to allow the PSOs time

to monitor the shutdown zones for 30 min prior to the initiation of ramp-up (pre-start clearance). During this 30 min pre-start clearance period the entire shutdown zone must be visible, except as indicated below.

- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated.
- A visual PSO conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed.
- Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that mitigation commands are conveyed swiftly while allowing PSOs to maintain watch.

The pre-start clearance requirement is waived for small delphinids and pinnipeds. Detection of a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno, Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped within the shutdown zone does not preclude beginning of ramp-up, unless the PSO confirms the individual to be of a genus other than those listed, in which case normal pre-clearance requirements apply.

If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which the pre-clearance requirement is waived), PSOs may use best professional judgment in making the decision to call for a shutdown.

- Ramp-up may not be initiated if any marine mammal to which the pre-start clearance requirement applies is within the shutdown zone. If a marine mammal is observed within the shutdown zone during the 30 min pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (30 min for all baleen whale species and sperm whales, 15 min for all other species).
- PSOs must monitor the shutdown zones 30 min before and during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the applicable shutdown zone.
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate visual monitoring has occurred with no detections of marine mammals in the 30 min prior to beginning ramp-up. Sparker activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

If the acoustic source is shut down for brief periods (*i.e.,* <30 min) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of marine mammals have occurred within the applicable shutdown zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Shutdown Procedures

All operators must adhere to the following shutdown requirements:

- Any PSO on duty has the authority to call for shutdown of the sparker source if a marine mammal is detected within the applicable shutdown zone.
- The operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the source to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.
- When the sparker source is active and a marine mammal appears within or enters the applicable shutdown zone, the source must be shut down. When shutdown is instructed by a PSO, the sparker source must be immediately deactivated and any dispute resolved only following deactivation.
- Two shutdown zones are defined, depending on the species and context. An extended shutdown zone encompassing the area at and below the sea surface out to a radius of 500 m from the sparker source (0–500 m) is defined for NARW. For all other marine mammals, the shutdown zone encompasses a standard distance of 100 m (0–100 m) during the use of the sparker.

The shutdown requirement is waived for small delphinids and pinnipeds. If a small delphinid (individual belonging to the following genera of the Family Delphinidae: *Steno, Delphinus, Lagenorhynchus, Stenella,* and *Tursiops*) or pinniped is visually detected within the shutdown zone, no shutdown is required unless the PSO confirms the individual to be of a genus other than those listed, in which case a shutdown is required.

If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger shutdown zone), PSOs may use best professional judgment in making the decision to call for a shutdown.

Upon implementation of shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable shutdown zone or following a clearance period (30 min for all baleen whale species and sperm whales, 15 min for all other species) with no further detection of the marine mammal.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the Level B harassment zone (157.7 m), shutdown must occur.

Vessel Strike Avoidance

Crew and supply vessel personnel must use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel(s), or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammals. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (species-specific distances are detailed below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammal from other phenomena and (2) broadly to identify a marine mammal as a NARW, other whale (defined in this context as sperm whales or baleen whales other than NARWs), or other marine mammals.

All survey vessels, regardless of size, must observe a 10-kn (18.52 km/h)

speed restriction in specific areas designated by NMFS for the protection of NARWs from vessel strikes. These include all Seasonal Management Areas (SMA) established under 50 CFR 224.105 (when in effect), any dynamic management areas (DMA) (when in effect), and Slow Zones. See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.

- All vessels must reduce speed to 10 kn (18.52 km/h) or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from NARWs, baleen whales (except humpback and minke), sperm whales, and any unidentified large whales. If a NARW, baleen whale (except humpback and minke), sperm whale, and any unidentified large whale is sighted within the relevant separation distance, the vessel must steer a course away at 10 kn (18.52 km/h) or less until the 500-m separation distance has been established. If a whale is observed but cannot be confirmed as a species other than a NARW, the vessel operator must assume that it is a NARW and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from all humpback and minke whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When marine mammals are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area, reduce speed and shift the engine to neutral). This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Members of the PSO team will consult NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations, and for the establishment of DMAs and/or Slow Zones. It is COSW's responsibility to maintain awareness of the establishment and location of any such areas and to abide by these requirements accordingly.

Seasonal Operating Requirements

As described above, a section of the survey area partially overlaps with a portion of a NARW SMA off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. The survey vessel, regardless of length, would be required to adhere to vessel speed restrictions (<10 kn (18.52 km/h)) when operating within the SMA during times when the SMA is active.

TABLE 5—NORTH ATLANTIC RIGHT WHALE DYNAMIC MANAGEMENT AREA (DMA) AND SEASONAL MANAGEMENT AREA (SMA) RESTRICTIONS WITHIN THE SURVEY AREA

Survey area	Species	DMA restrictions	Slow zones	SMA restrictions
Lease Area	North Atlantic right whale ..	If established by NMFS, all of COSW's vessel will abide by the described restrictions.	If established by NMFS, all of COSW's vessel will abide by the described restrictions.	N/A.
ECR Area (within SMA)	North Atlantic right whale ..	If established by NMFS, all of COSW's vessel will abide by the described restrictions.	If established by NMFS, all of COSW's vessel will abide by the described restrictions.	November 1 through April 31 (Ports of New York/New Jersey).
ECR Area (outside SMA) ..	North Atlantic right whale ..	If established by NMFS, all of COSW's vessel will abide by the described restrictions.	If established by NMFS, all of COSW's vessel will abide by the described restrictions.	N/A.

More information on Ship Strike Reduction for the NARW can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales*.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term

fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

Visual monitoring must be performed by qualified, NMFS-approved PSOs. COSW must submit PSO resumes for NMFS review and approval prior to commencement of the survey. Resumes should include dates of training and any prior NMFS approval, as well as dates and description of last experience, and must be accompanied by information documenting successful completion of an acceptable training course.

For prospective PSOs not previously approved, or for PSOs whose approval is not current, NMFS must review and approve PSO qualifications. Resumes should include information related to relevant education, experience, and training, including dates, duration, location, and description of prior PSO experience. Resumes must be accompanied by relevant documentation of successful completion of necessary training.

NMFS may approve PSOs as conditional or unconditional. A conditionally-approved PSO may be one who is trained but has not yet attained the requisite experience. An unconditionally-approved PSO is one who has attained the necessary experience. For unconditional approval, the PSO must have a minimum of 90 days at sea performing the role during a geophysical survey, with the conclusion of the most recent relevant experience not more than 18 months previous.

At least one of the visual PSOs aboard the vessel must be unconditionally-approved. One unconditionally-approved visual PSO shall be designated as the lead for the entire PSO team. This lead should typically be the PSO with the most experience, who would coordinate duty schedules and roles for the PSO team and serve as primary point of contact for the vessel operator. To the maximum extent practicable, the duty schedule shall be planned such that unconditionally-approved PSOs are on duty with conditionally-approved PSOs.

At least one PSO aboard each acoustic source vessel must have a minimum of 90 days at-sea experience working in the role, with no more than 18 months elapsed since the conclusion of the at-sea experience. One PSO with such experience must be designated as the lead for the entire PSO team and serve as the primary point of contact for the vessel operator. (Note that the responsibility of coordinating duty schedules and roles may instead be assigned to a shore-based, third-party monitoring coordinator.) To the maximum extent practicable, the lead PSO must devise the duty schedule such that experienced PSOs are on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or more) a written and/or oral examination developed for the training program.

PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; and (3) previous work experience as a PSO (PSO must be in good standing and demonstrate good performance of PSO duties).

COSW must work with the selected third-party PSO provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals, and to ensure that PSOs are capable of calibrating equipment as necessary for accurate distance estimates and species identification. Such equipment, at a minimum, shall include:

- At least one thermal (infrared) imagine device suited for the marine environment;
- Reticle binoculars (*e.g.,* 7 x 50) of appropriate quality (at least one per PSO, plus backups);
- Global Positioning Units (GPS) (at least one plus backups);
- Digital cameras with a telephoto lens that is at least 300-mm or equivalent on a full-frame single lens reflex (SLR) (at least one plus backups). The camera or lens should also have an image stabilization system;
- Equipment necessary for accurate measurement of distances to marine mammal;
- Compasses (at least one plus backups);
- Means of communication among vessel crew and PSOs; and,
- Any other tools deemed necessary to adequately and effectively perform PSO tasks.

The equipment specified above may be provided by an individual PSO, the third-party PSO provider, or the operator, but COSW is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

The PSOs will be responsible for monitoring the waters surrounding the survey vessel to the farthest extent permitted by sighting conditions, including Shutdown Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Shutdown Zones during survey activities. It will be the responsibility of the PSO(s) on duty to communicate the presence of marine mammals as well as to communicate the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect marine mammals, particularly in proximity to Shutdown Zones. Reticulated binoculars must also be available to PSOs for use as appropriate based on conditions and visibility to support the sighting and monitoring of marine mammals. During nighttime operations, appropriate night-vision devices (*e.g.,* night-vision goggles with thermal clip-ons and infrared technology) would be used. Position data would be recorded using hand-held or vessel GPS units for each sighting.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs must also conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the active acoustic sources and between acquisition periods, to the maximum extent practicable. Any observations of marine mammals by crew members aboard the vessel associated with the survey would be relayed to the PSO team. Data on all PSO observations would be recorded based on standard PSO collection requirements (see *Proposed Reporting*

Measures). This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal behavior that occurs (*e.g.,* noted behavioral disturbances). Members of the PSO team shall consult the NMFS NARW reporting system and Whale Alert, daily and as able, for the presence of NARWs throughout survey operations.

Proposed Reporting Measures

COSW shall submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammals sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced, time-stamped vessel tracklines for all time periods during which acoustic sources were operating. Tracklines should include points recording any change in acoustic source status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). GIS files shall be provided in Environmental Systems Research Institute, Inc. (ESRI) shapefile format and include the Coordinated Universal Time (UTC) date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize the information. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov, nmfs.gar.incidental-take@noaa.gov* and *ITP.clevenstine@noaa.gov.*

PSOs must use standardized electronic data forms to record data. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of marine mammal to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

1. Vessel names (source vessel), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. PSO names and affiliations;
4. Date and participants of PSO briefings;
5. Visual monitoring equipment used;
6. PSO location on vessel and height of observation location above water surface;
7. Dates and times (Greenwich Mean Time (GMT)) of survey on/off effort and times corresponding with PSO on/off effort;
8. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
9. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
10. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
11. Water depth (if obtainable from data collection software);
12. Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions change significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
13. Factors that may contribute to impaired observations during each PSO shift change or as needed as environmental conditions change (*e.g.,* vessel traffic, equipment malfunctions); and,
14. Survey activity information (and changes thereof), such as acoustic source power output while in operation, number and volume of airguns operating in an array, tow depth of an acoustic source, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).
15. Upon visual observation of any marine mammal, the following information must be recorded:

a. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);

b. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);

c. PSO who sighted the animal;

d. Time of sighting;

e. Initial detection method;

f. Sightings cue;

g. Vessel location at time of sighting (decimal degrees);

h. Direction of vessel's travel (compass direction);

i. Speed of the vessel(s) from which the observation was made;

j. Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level or unidentified); also note the composition of the group if there is a mix of species;

k. Species reliability (an indicator of confidence in identification);

l. Estimated distance to the animal and method of estimating distance;

m. Estimated number of animals (high/low/best);

n. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);

o. Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars, or markings, shape and size of dorsal fin, shape of head, and blow characteristics);

p. Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior before and after point of closest approach);

q. Mitigation actions; description of any actions implemented in response to the sighting (*e.g.,* delays, shutdowns, ramp-up, speed or course alteration, *etc.*) and time and location of the action;

r. Equipment operating during sighting;

s. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and,

t. Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a NARW is observed at any time by PSOs or personnel on the project vessel, during surveys or during vessel transit, COSW must report the sighting information to the NMFS NARW Sighting Advisory System (866–755–6622) within 2 hr of occurrence, when practicable, or no later than 24 hr after occurrence. NARW sightings in any location may also be reported to the U.S. Coast Guard via channel 16 and through the WhaleAlert app (*http://www.whalealert.org*).

In the event that personnel involved in the survey activities discover an

injured or dead marine mammal, the incident must be reported to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.incidental-take@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*). The report must include the following information:

1. Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

2. Species identification (if known) or description of the animal(s) involved;

3. Condition of the animal(s) (including carcass condition if the animal is dead);

4. Observed behaviors of the animal(s), if alive;

5. If available, photographs or video footage of the animal(s); and

6. General circumstances under which the animal was discovered.

In the event of a ship strike of a marine mammal by any vessel involved in the activities, COSW must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.incidental-take@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. The report would include the following information:

1. Time, date, and location (latitude/longitude) of the incident;

2. Species identification (if known) or description of the animal(s) involved;

3. Vessel's speed during and leading up to the incident;

4. Vessel's course/heading and what operations were being conducted (if applicable);

5. Status of all sound sources in use;

6. Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;

7. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;

8. Estimated size and length of animal that was struck;

9. Description of the behavior of the marine mammal immediately preceding and/or following the strike;

10. If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;

11. Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and

12. To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in Table 2, given that some of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are included as separate sub-sections below. Specifically, we provide additional discussion related to NARW and to other species currently experiencing UMEs.

NMFS does not anticipate that serious injury or mortality would occur as a result from HRG surveys, even in the absence of mitigation, and no serious injury or mortality is proposed to be authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their Habitat section, non-auditory physical effects, auditory physical effects, and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of Level B harassment in the form of temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007, Ellison *et al.,* 2012).

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 157.7 m. Therefore, the ensonified area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the planned survey area and there are no feeding areas known to be biologically important to marine mammals within the survey area. There is no designated critical habitat for any ESA-listed marine mammals in the survey area.

North Atlantic Right Whales

The status of the NARW population is of heightened concern and, therefore, merits additional analysis. As noted previously, elevated NARW mortalities began in June 2017 and there is an active UME. Overall, preliminary findings attribute human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of NARWs. As noted previously, the survey area overlaps a migratory corridor BIA for NARWs that extends from Massachusetts to Florida and from the coast to beyond the shelf break. Due to the fact that the planned survey activities are temporary (will occur for up to 1 year) and the spatial extent of sound produced by the survey

would be small relative to the spatial extent of the available migratory habitat in the BIA, NARW migration is not expected to be impacted by the survey. This important migratory area is approximately 269,488 km² in size (compared with the worst case scenario of approximately 9,611 km² of total estimated Level B harassment ensonified area associated with the Survey Area) and is comprised of the waters of the continental shelf offshore the East Coast of the United States, extending from Florida through Massachusetts.

Given the relatively small size of the ensonified area, it is unlikely that prey availability would be adversely affected by HRG survey operations. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during COSW's planned activities. Additionally, only very limited take by Level B harassment of NARWs has been requested and is being proposed for authorization by NMFS as HRG survey operations are required to maintain and implement a 500-m shutdown zone. The 500-m shutdown zone for NARWs is conservative, considering the Level B harassment zone for the most impactful acoustic source (*i.e.,* sparker) is estimated to be 157.7 m, and thereby minimizes the intensity and duration of any potential incidents of behavioral harassment for this species. As noted previously, Level A harassment is not expected due to the small estimated zones in conjunction with the aforementioned shutdown requirements. NMFS does not anticipate NARW takes that would result from COSW's proposed activities would impact annual rates of recruitment or survival. Thus, any takes that occur would not result in population level impacts.

Other Marine Mammal Species With Active UMEs

As noted previously, there are several active UMEs occurring in the vicinity of COSW's Survey Area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (*i.e.,* ship strike, entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains stable at approximately 12,000 individuals.

Beginning in January 2017, elevated minke whale strandings have occurred along the Atlantic coast from Maine through South Carolina, with highest numbers in Massachusetts, Maine, and New York. This event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales.

Elevated numbers of harbor seal and gray seal mortalities were first observed between 2018–2020 and, as part of a separate UME, again in 2022. These have occurred across Maine, New Hampshire, and Massachusetts. Based on tests conducted so far, the main pathogen found in the seals is phocine distemper virus (2018–2020) and avian influenza (2022), although additional testing to identify other factors that may be involved in the UMEs is underway. The UMEs do not provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 60,000 and annual M/SI (339) is well below PBR (1,729) (Hayes *et al.,* 2022). The population abundance for gray seals in the United States is over 27,000, with an estimated abundance, including seals in Canada, of approximately 450,000. In addition, the abundance of gray seals is likely increasing in the U.S. Atlantic as well as in Canada (Hayes *et al.,* 2021, Hayes *et al.,* 2022).

The required mitigation measures are expected to reduce the number and/or severity of takes for all species listed in Table 2, including those with active UMEs, to the level of least practicable adverse impact. In particular, they would provide animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury. No Level A harassment is anticipated, even in the absence of mitigation measures, or proposed for authorization.

NMFS expects that takes would be in the form of short-term Level B harassment by way of brief startling reactions and/or temporary vacating of the area, or decreased foraging (if such activity was occurring)—reactions that (at the scale and intensity anticipated here) are considered to be of low severity, with no lasting biological consequences. Since both the sources and marine mammals are mobile, animals would only be exposed briefly to a small ensonified area that might result in take. Additionally, required mitigation measures would further reduce exposure to sound that could result in more severe behavioral harassment.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or proposed to be authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or proposed to be authorized;
- Foraging success is not likely to be significantly impacted as effects on species that serve as prey species for marine mammals from the survey are expected to be minimal;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the ensonified areas during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B harassment only consisting of brief startling reactions and/or temporary avoidance of the ensonified area;
- Survey activities would occur in such a comparatively small portion of the BIA for the NARW migration that any avoidance of the area due to survey activities would not affect migration. In addition, mitigation measures require shutdown at 500 m (over three times the size of the Level B harassment zone of 157.7 m) to minimize the effects of any Level B harassment take of the species; and,
- The proposed mitigation measures, including visual monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most

appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

NMFS proposes to authorize incidental take by Level B harassment only of 15 marine mammal species with 16 managed stocks. The total amount of takes proposed for authorization relative to the best available population abundance is less than 7 percent for any of the 16 managed stocks (Table 4). The take numbers proposed for authorization are considered conservative estimates for purposes of the small numbers determination as they assume all takes represent different individual animals, which is unlikely to be the case.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS Office of Protected Resources (OPR) is proposing to authorize take of four species of marine mammals which are listed under the ESA, including NARW, fin whale, sei whale, and sperm whale, and has determined these activities fall within the scope of activities analyzed in the NMFS GARFO programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to COSW for conducting marine site characterization surveys in coastal waters off of New Jersey and New York in the New York Bight for a period of 1 year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for marine site characterization surveys. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:
  - An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
  - A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 18, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–08506 Filed 4–20–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Finance Program Requirements

The Department of Commerce will submit 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, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on January 19, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Finance Program Requirements.

OMB Control Number: 0648–0012.

Form Number(s): 88–1.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 336.

Average Hours per Response: Program Application, 10 hours; Annual Financial Statement, 2 hours; Guarantor Consent, 5 minutes.

Total Annual Burden Hours: 1,194.

Needs and Uses: This request is for an extension of a currently approved information collection. The National Oceanic and Atmospheric Administration (NOAA) operates a direct loan program to assist in financing certain actions relating to commercial fishing vessels, shoreside fishery facilities, aquaculture operations, and individual fishing quotas. Application information is required to determine loan eligibility pursuant to 50 CFR part 253 and to determine the type and amount of financial assistance available to the applicant. Applicants are required to submit NOAA FORM 88–1, and supporting financial documents. An annual financial statement is required from the recipients to monitor the financial status of the loan. Small stylistic changes have been made to the NOAA FORM 88–1 to make the form easier for the applicant to understand and to fill electronically.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: At application, annually thereafter.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: 50 CFR part 253.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0012.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–08472 Filed 4–20–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; American Lobster—Annual Trap Transfer Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 20, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0673 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Douglas Potts, Fishery Policy Analyst, 978–281–9341 or *Douglas.Potts@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

The American lobster resource and fishery are cooperatively managed by the states and NMFS under the authority of the Atlantic Coastal Fisheries Cooperative Management Act, according to the framework established by the Atlantic States Marine Fisheries Commission (ASMFC) in Amendment 3 of its Interstate Fishery Management Plan (ISFMP). This collection of information is in response to several addenda to Amendment 3 of the ISFMP that work to reduce trap fishing effort through limited entry fishing and trap allocation limit reductions. The Trap Transfer Program is intended to foster economic flexibility for the lobster industry while reducing fishing effort on the American lobster resource. The regulations implementing the FMP in the EEZ are specified at 50 CFR part 697.

This collection of information is being conducted to help mitigate the economic burden of scheduled trap allocation reductions in Lobster Conservation Management Areas 2 and 3 on Federal lobster permit holders through the Annual Lobster Trap Transfer Program, which allows all qualified Federal lobster permit holders to buy and sell trap allocation from Areas 2, 3, or Outer Cape Cod. NMFS collects application forms from Lobster permit holders who wish to transfer trap allocation from these areas during a 2-month period (from August 1 through September 30) each year; and the revised allocations resulting from the transfers become effective for each participating lobster permit at the start of the following Federal lobster fishing year, on May 1. Both the seller and buyer of the traps are required to sign the application form, date the document, and clearly show that the seller has sufficient allocation to transfer and that the buyer has sufficient room under the applicable trap cap. There were no modifications to this collection.

II. Method of Collection

Applications for the Trap Transfer Program are accepted annually from August 1 through September 30 by mail or email.

III. Data

OMB Control Number: 0648–0673.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; business or other for-profit organizations; State, local, or Tribal government; Federal Government.

Estimated Number of Respondents: 204.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 17.

Estimated Total Annual Cost to Public: $492.

Respondent's Obligation: Required to obtain or retain benefits.

Legal Authority: Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this Information Collection Request. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personally identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–08441 Filed 4–20–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Tilefish Individual Fishing Quota Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 20, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0590 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Douglas Potts, (978) 281–9341 or *Douglas.Potts@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for the extension of a currently approved information collection.

National Marine Fisheries Service (NMFS) Greater Atlantic Region manages the golden tilefish fishery of the Exclusive Economic Zone (EEZ) of the Northeastern United States, through the Tilefish Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The regulations implementing the FMP are specified at 50 CFR part 648 subpart N.

The recordkeeping and reporting requirements at § 648.294 form the basis for this collection of information. NMFS requests information from tilefish individual fishing quota (IFQ) permit holders to process applications that ensure IFQ allocation holders are provided a statement of their annual catch quota, and for enforcement purposes, to ensure vessels are not exceeding an individual quota allocation. In conjunction with the application, NMFS also collects IFQ share accumulation information to ensure that IFQ allocation holders do not acquire an excessive share of the total limited access privileges, as required by section 303A(d)(5)(C) of the Magnuson-Stevens Act.

NMFS requests transfer application information to process and track requests from allocation holders to transfer quota allocation (permanent and temporary) to another entity. NMFS also collects information for cost recovery purposes as required under the Magnuson-Stevens Act. Cost recovery is used to collect fees to recover the costs directly related to management, data collection and analysis, and enforcement of IFQ programs. Lastly, NMFS collects landings information to ensure that the amounts of tilefish landed and ex-vessel prices are properly recorded for quota monitoring purposes and the calculation of IFQ fees. Having this information results in an increasingly more efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ.

II. Method of Collection

The IFQ Allocation permit application, IFQ holder cap form, and the IFQ transfer form are all paper applications. These applications can also be completed in a fillable electronic format and submitted through email or printed and sent by mail. The IFQ cost recovery process is entirely online at *www.pay.gov.*

III. Data

OMB Control Number: 0648–0590.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time per Response: IFQ Allocation Permit Application, 30 minutes; IFQ Holder Cap Form, 5 minutes; IFQ Transfer Form, 5 minutes; IFQ Cost Recovery, 1 hour.

Estimated Total Annual Burden Hours: 20.5 hours.

Estimated Total Annual Cost to Public: $26.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* Section 303).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to

be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–08442 Filed 4–20–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC922]

Endangered Species; File No. 27294

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Nicole Phillips, Ph.D., The University of Southern Mississippi, Department of Biological Sciences, 118 College Drive #5018, Hattiesburg, MS 39406 (File No. 27294) has applied in due form for a permit to receive, collect, and import sawfish samples for purposes of scientific research.

DATES: Written, telefaxed, or emailed comments must be received on or before May 22, 2023.

ADDRESSES: The application request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27294 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27294 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Jennifer Skidmore at (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant (Dr. Phillips) is requesting authorization to receive, collect, and import tissue samples of five species of listed sawfish, including smalltooth sawfish (*Pristis pectinata*), largetooth sawfish (*P. pristis*), green sawfish (*P. zijsron*), dwarf sawfish (*P. clavata*), and narrow sawfish (*Anoxypristis cuspidate*) to generate genetic data of historic sawfish populations from tissue samples ''collected'' by researchers from archived rostra or those received opportunistically from saws with known location data held in museums, educational, and private collections. The goals of research are to: (1) assess whether there has been a recent loss of genetic diversity in sawfishes globally, (2) evaluate the long-term survival outlook for sawfishes, and (3) identify locations harboring unique genetic variation which may warrant prioritization in future conservation plans. Tissue samples may include pre-act or post-act Endangered Species Act (ESA) specimens and will be collected and received from sawfish specimens sourced in U.S. public and private collections or imported from museums and collaborators overseas for a period of 5 years. Up to 800 tissue samples of sawfish specimens will be imported from all noted species annually. As appropriate, samples may also be exported for analysis or returned to former holders as unused samples. Genetic data will be generated for the historic tissue samples and compared to genetic datasets for contemporary populations in Australia, the USA, Papua New Guinea, and Brazil. The requested duration of the permit is 5 years.

Dated: April 18, 2023.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–08465 Filed 4–20–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: May 21, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7530–01–590–7110—Paper, Thermal, Roll, White, 2¼″ × 165′
Designated Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Dispatcher
Mandatory for: Defense Logistics Agency, Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA
Designated Source of Supply: SOAR 365, Richmond, VA
Contracting Activity: DEFENSE LOGISTICS AGENCY, DCSO RICHMOND

Service Type: Firewatch/Tank Void/Lead

Handler Support Services
Mandatory for: Puget Sound Naval Ship Yards at Bremerton, Bangor and Keyport, WA
Designated Source of Supply: Skookum Educational Programs, Bremerton, WA
Contracting Activity: DEPT OF THE NAVY, NAVSUP FLT LOG CTR PUGET SOUND

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–08489 Filed 4–20–23; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, April 26, 2023—10:00 a.m. (See **MATTER TO BE CONSIDERED**).

PLACE: The meeting will be held remotely, and in person at 4330 East-West Highway, Bethesda, Maryland 20814.

STATUS: Commission Meeting—Open to the Public.

MATTER TO BE CONSIDERED: *Decisional Matter:* FY 2023 Proposed Operating Plan Alignment and Midyear Review.

To attend virtually, please use the following link and details below:

https://cpsc.webex.com/weblink/register/r962d40686c83305379 47146913d9cd3b

+1–415–527–5035 US Toll
Access code: 2760 154 6502

CONTACT PERSON FOR MORE INFORMATION: Elaine Niedzwiecki, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, 301–504–7517.

Dated: April 19, 2023.

Elaine Niedzwiecki,

Administrative Officer.

[FR Doc. 2023–08636 Filed 4–19–23; 4:15 pm]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Defense Human Resources Activity, Department of Defense (DoD).

ACTION: Notice of revised per diem rates in non-foreign areas outside the continental U.S.

SUMMARY: Defense Human Resources Activity publishes this Civilian Personnel Per Diem Bulletin Number 323. Bulletin Number 323 lists current per diem rates prescribed for reimbursement of subsistence expenses while on official Government travel to Alaska, Hawaii, the Commonwealth of Puerto Rico, and the possessions of the United States. The Fiscal Year (FY) 2023 lodging and meal rate review for American Samoa, Midway Islands, Northern Mariana Islands, and Wake Island resulted in rate changes for multiple locations.

DATES: The updated rates take effect May 1, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. David Maly, (571) 372–1316, *david.j.maly.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: This document notifies the public of revisions in per diem rates prescribed by the Per Diem, Travel, and Transportation Allowance Committee for travel to non-foreign areas outside the continental United States. The FY 2023 lodging and meal rate review for American Samoa, Midway Islands, Northern Mariana Islands, and Wake Island resulted in rate changes for multiple locations. Bulletin Number 323 is published in the **Federal Register** to ensure that Government travelers outside the DoD are notified of revisions to the current reimbursement rates.

If you believe the lodging, meal or incidental allowance rate for a locality listed in the following table is insufficient, you may request a rate review for that location. For more information about how to request a review, please see the Defense Travel Management Office's Per Diem Rate Review Frequently Asked Questions (FAQ) page at *https://www.travel.dod.mil/Travel-Transportation-Rates/Per-Diem/.*

Dated: April 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	[OTHER]	01/01	12/31	193	121	314	11/01/2022
ALASKA	ADAK	01/01	12/31	193	121	314	11/01/2022
ALASKA	ANCHORAGE	01/01	12/31	229	145	374	11/01/2022
ALASKA	BARROW	05/01	08/31	301	129	430	11/01/2022
ALASKA	BARROW	09/01	04/30	266	129	395	11/01/2022
ALASKA	BARTER ISLAND LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	BETHEL	01/01	12/31	219	101	320	11/01/2022
ALASKA	BETTLES	01/01	12/31	193	121	*314	11/01/2022
ALASKA	CAPE LISBURNE LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	CAPE NEWENHAM LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	CAPE ROMANZOF LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	CLEAR AB	01/01	12/31	193	121	314	11/01/2022
ALASKA	COLD BAY	01/01	12/31	193	121	314	11/01/2022
ALASKA	COLD BAY LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	COLDFOOT	01/01	12/31	249	93	342	11/01/2022
ALASKA	COPPER CENTER	01/01	12/31	193	121	314	11/01/2022
ALASKA	CORDOVA	01/01	12/31	174	106	280	11/01/2022
ALASKA	CRAIG	05/01	09/30	139	94	233	11/01/2022
ALASKA	CRAIG	10/01	04/30	109	94	203	11/01/2022
ALASKA	DEADHORSE	01/01	12/31	193	121	*314	11/01/2022
ALASKA	DELTA JUNCTION	01/01	12/31	193	106	299	11/01/2022
ALASKA	DENALI NATIONAL PARK	05/01	09/30	189	118	307	11/01/2022
ALASKA	DENALI NATIONAL PARK	10/01	04/30	99	118	217	11/01/2022
ALASKA	DILLINGHAM	01/01	12/31	320	113	433	11/01/2022
ALASKA	DUTCH HARBOR-UNALASKA	01/01	12/31	154	129	283	11/01/2022
ALASKA	EARECKSON AIR STATION	01/01	12/31	146	74	220	11/01/2022
ALASKA	EIELSON AFB	05/16	09/30	204	108	312	11/01/2022
ALASKA	EIELSON AFB	10/01	05/15	129	108	237	11/01/2022
ALASKA	ELFIN COVE	01/01	12/31	193	121	314	11/01/2022
ALASKA	ELMENDORF AFB	01/01	12/31	229	145	374	11/01/2022
ALASKA	FAIRBANKS	05/16	09/30	204	108	312	11/01/2022
ALASKA	FAIRBANKS	10/01	05/15	129	108	237	11/01/2022

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
ALASKA	FORT YUKON LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	FT. GREELY	01/01	12/31	193	106	299	11/01/2022
ALASKA	FT. RICHARDSON	01/01	12/31	229	145	374	11/01/2022
ALASKA	FT. WAINWRIGHT	05/16	09/30	204	108	312	11/01/2022
ALASKA	FT. WAINWRIGHT	10/01	05/15	129	108	237	11/01/2022
ALASKA	GAMBELL	01/01	12/31	193	121	314	11/01/2022
ALASKA	GLENNALLEN	01/01	12/31	193	121	314	11/01/2022
ALASKA	HAINES	05/01	09/30	184	113	297	11/01/2022
ALASKA	HAINES	10/01	04/30	159	113	272	11/01/2022
ALASKA	HEALY	05/01	09/30	189	118	307	11/01/2022
ALASKA	HEALY	10/01	04/30	99	118	217	11/01/2022
ALASKA	HOMER	05/01	09/30	210	124	334	11/01/2022
ALASKA	HOMER	10/01	04/30	129	124	253	11/01/2022
ALASKA	JB ELMENDORF-RICHARDSON	01/01	12/31	229	145	374	11/01/2022
ALASKA	JUNEAU	02/01	09/30	249	118	367	11/01/2022
ALASKA	JUNEAU	10/01	01/31	189	118	307	11/01/2022
ALASKA	KAKTOVIK	01/01	12/31	193	121	*314	11/01/2022
ALASKA	KAVIK CAMP	01/01	12/31	193	121	*314	11/01/2022
ALASKA	KENAI-SOLDOTNA	05/01	09/30	171	113	284	11/01/2022
ALASKA	KENAI-SOLDOTNA	10/01	04/30	129	113	242	11/01/2022
ALASKA	KENNICOTT	01/01	12/31	193	121	314	11/01/2022
ALASKA	KETCHIKAN	05/01	09/30	250	118	368	11/01/2022
ALASKA	KETCHIKAN	10/01	04/30	160	118	278	11/01/2022
ALASKA	KING SALMON	01/01	12/31	193	121	314	11/01/2022
ALASKA	KING SALMON LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	KLAWOCK	05/01	09/30	139	94	233	11/01/2022
ALASKA	KLAWOCK	10/01	04/30	109	94	203	11/01/2022
ALASKA	KODIAK	03/01	09/30	223	109	332	11/01/2022
ALASKA	KODIAK	10/01	02/28	121	109	230	11/01/2022
ALASKA	KOTZEBUE	01/01	12/31	193	121	314	11/01/2022
ALASKA	KULIS AGS	01/01	12/31	229	145	374	11/01/2022
ALASKA	MCCARTHY	01/01	12/31	193	121	314	11/01/2022
ALASKA	MCGRATH	01/01	12/31	193	121	*314	11/01/2022
ALASKA	MURPHY DOME	05/16	09/30	204	108	312	11/01/2022
ALASKA	MURPHY DOME	10/01	05/15	129	108	237	11/01/2022
ALASKA	NOME	05/01	08/31	250	118	368	11/01/2022
ALASKA	NOME	09/01	04/30	242	118	360	11/01/2022
ALASKA	NOSC ANCHORAGE	01/01	12/31	229	145	374	11/01/2022
ALASKA	NUIQSUT	01/01	12/31	193	121	*314	11/01/2022
ALASKA	OLIKTOK LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	PALMER	01/01	12/31	196	131	327	11/01/2022
ALASKA	PETERSBURG	01/01	12/31	130	108	238	11/01/2022
ALASKA	POINT BARROW LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	POINT HOPE	01/01	12/31	193	121	*314	11/01/2022
ALASKA	POINT LONELY LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	PORT ALEXANDER	01/01	12/31	193	121	*314	11/01/2022
ALASKA	PORT ALSWORTH	01/01	12/31	193	121	314	11/01/2022
ALASKA	PRUDHOE BAY	01/01	12/31	193	121	*314	11/01/2022
ALASKA	SELDOVIA	05/01	09/30	210	124	334	11/01/2022
ALASKA	SELDOVIA	10/01	04/30	129	124	253	11/01/2022
ALASKA	SEWARD	04/01	09/30	284	164	448	11/01/2022
ALASKA	SEWARD	10/01	03/31	129	164	293	11/01/2022
ALASKA	SITKA-MT. EDGECUMBE	04/01	09/30	245	116	361	11/01/2022
ALASKA	SITKA-MT. EDGECUMBE	10/01	03/31	199	116	315	11/01/2022
ALASKA	SKAGWAY	05/01	09/30	250	118	368	11/01/2022
ALASKA	SKAGWAY	10/01	04/30	160	118	278	11/01/2022
ALASKA	SLANA	01/01	12/31	193	121	314	11/01/2022
ALASKA	SPARREVOHN LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	SPRUCE CAPE	03/01	09/30	223	109	332	11/01/2022
ALASKA	SPRUCE CAPE	10/01	02/28	121	109	230	11/01/2022
ALASKA	ST. GEORGE	01/01	12/31	193	121	314	11/01/2022
ALASKA	TALKEETNA	01/01	12/31	193	123	316	11/01/2022
ALASKA	TANANA	05/01	08/31	250	118	368	11/01/2022
ALASKA	TANANA	09/01	04/30	242	118	360	11/01/2022
ALASKA	TATALINA LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	TIN CITY LRRS	01/01	12/31	193	121	314	11/01/2022
ALASKA	TOK	01/01	12/31	105	113	218	11/01/2022
ALASKA	VALDEZ	05/16	09/15	230	110	340	11/01/2022
ALASKA	VALDEZ	09/16	05/15	105	110	215	11/01/2022
ALASKA	WAINWRIGHT	01/01	12/31	295	77	372	11/01/2022
ALASKA	WASILLA	06/01	09/30	216	104	320	11/01/2022
ALASKA	WASILLA	10/01	05/31	108	104	212	11/01/2022
ALASKA	WRANGELL	05/01	09/30	250	118	368	11/01/2022
ALASKA	WRANGELL	10/01	04/30	160	118	278	11/01/2022
ALASKA	YAKUTAT	06/01	09/30	350	111	461	11/01/2022
ALASKA	YAKUTAT	10/01	05/31	150	111	261	11/01/2022
AMERICAN SAMOA	AMERICAN SAMOA	01/01	12/31	149	103	252	05/01/2023
AMERICAN SAMOA	PAGO PAGO	01/01	12/31	149	103	252	05/01/2023
GUAM	GUAM (INCL ALL MIL INSTAL)	01/01	12/31	159	124	283	02/01/2023
GUAM	JOINT REGION MARIANAS (ANDERSEN).	01/01	12/31	159	124	283	02/01/2023
GUAM	JOINT REGION MARIANAS (NAVAL BASE).	01/01	12/31	159	124	283	02/01/2023

State or territory	Locality	Season start	Season end	Lodging	M&IE	Total per diem	Effective date
GUAM	TAMUNING	01/01	12/31	159	124	283	02/01/2023
HAWAII	[OTHER]	01/01	12/31	229	157	386	02/01/2023
HAWAII	CAMP H M SMITH	01/01	12/31	202	157	359	02/01/2023
HAWAII	CNI NAVMAG PEARL HARBOR-HICKAM.	01/01	12/31	202	157	359	02/01/2023
HAWAII	FT. DERUSSEY	01/01	12/31	202	157	359	02/01/2023
HAWAII	FT. SHAFTER	01/01	12/31	202	157	359	02/01/2023
HAWAII	HICKAM AFB	01/01	12/31	202	157	359	02/01/2023
HAWAII	HONOLULU	01/01	12/31	202	157	359	02/01/2023
HAWAII	ISLE OF HAWAII: HILO	01/01	12/31	199	146	345	02/01/2023
HAWAII	ISLE OF HAWAII: LOCATIONS OTHER THAN HILO.	01/01	12/31	229	173	402	02/01/2023
HAWAII	ISLE OF KAUAI	01/01	12/31	325	165	490	02/01/2023
HAWAII	ISLE OF LANAI	01/01	12/31	229	157	386	02/01/2023
HAWAII	ISLE OF MAUI	01/01	12/31	354	153	507	02/01/2023
HAWAII	ISLE OF MOLOKAI	01/01	12/31	229	157	386	02/01/2023
HAWAII	ISLE OF OAHU	01/01	12/31	202	157	359	02/01/2023
HAWAII	JB PEARL HARBOR-HICKAM	01/01	12/31	202	157	359	02/01/2023
HAWAII	KAPOLEI	01/01	12/31	202	157	359	02/01/2023
HAWAII	KEKAHA PACIFIC MISSILE RANGE FAC.	01/01	12/31	325	165	490	03/01/23
HAWAII	KILAUEA MILITARY CAMP	01/01	12/31	199	146	345	02/01/2023
HAWAII	LIHUE	01/01	12/31	325	165	490	02/01/2023
HAWAII	MCB HAWAII	01/01	12/31	202	157	359	02/01/2023
HAWAII	NCTAMS PAC WAHIAWA	01/01	12/31	202	157	359	02/01/2023
HAWAII	NOSC PEARL HARBOR	01/01	12/31	202	157	359	02/01/2023
HAWAII	PEARL HARBOR	01/01	12/31	202	157	359	02/01/2023
HAWAII	PMRF BARKING SANDS	01/01	12/31	325	165	490	02/01/2023
HAWAII	SCHOFIELD BARRACKS	01/01	12/31	202	157	359	02/01/2023
HAWAII	TRIPLER ARMY MEDICAL CENTER.	01/01	12/31	202	157	359	02/01/2023
HAWAII	WHEELER ARMY AIRFIELD	01/01	12/31	202	157	359	02/01/2023
MIDWAY ISLANDS	MIDWAY ISLANDS	01/01	12/31	125	81	206	05/01/2023
NORTHERN MARIANA ISLANDS	ROTA	01/01	12/31	130	125	255	05/01/2023
NORTHERN MARIANA ISLANDS	SAIPAN	01/01	12/31	161	113	274	05/01/2023
NORTHERN MARIANA ISLANDS	TINIAN	01/01	12/31	145	95	240	05/01/2023
PUERTO RICO	[OTHER]	01/01	12/31	159	100	259	05/01/2021
PUERTO RICO	AGUADILLA	01/01	12/31	149	90	239	05/01/2021
PUERTO RICO	BAYAMON	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	BAYAMON	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	CAROLINA	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	CAROLINA	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	CEIBA	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	CULEBRA	01/01	12/31	159	105	264	05/01/2021
PUERTO RICO	FAJARDO [INCL ROOSEVELT RDS NAVSTAT].	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO].	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO].	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	HUMACAO	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	LUIS MUNOZ MARIN IAP AGS	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	LUQUILLO	01/01	12/31	159	110	269	05/01/2021
PUERTO RICO	MAYAGUEZ	01/01	12/31	109	94	203	05/01/2021
PUERTO RICO	PONCE	01/01	12/31	149	130	279	05/01/2021
PUERTO RICO	RIO GRANDE	01/01	12/31	169	85	254	05/01/2021
PUERTO RICO	SABANA SECA [INCL ALL MILITARY].	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	SABANA SECA [INCL ALL MILITARY].	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	SAN JUAN & NAV RES STA	12/01	05/31	195	115	310	05/01/2021
PUERTO RICO	SAN JUAN & NAV RES STA	06/01	11/30	167	115	282	05/01/2021
PUERTO RICO	VIEQUES	01/01	12/31	159	94	253	05/01/2021
VIRGIN ISLANDS (U.S.)	ST. CROIX	12/15	04/14	299	120	419	04/01/2022
VIRGIN ISLANDS (U.S.)	ST. CROIX	04/15	12/14	247	120	367	04/01/2022
VIRGIN ISLANDS (U.S.)	ST. JOHN	12/04	04/30	230	123	353	04/01/2022
VIRGIN ISLANDS (U.S.)	ST. JOHN	05/01	12/03	170	123	293	04/01/2022
VIRGIN ISLANDS (U.S.)	ST. THOMAS	04/15	12/15	249	118	367	04/01/2022
VIRGIN ISLANDS (U.S.)	ST. THOMAS	12/16	04/14	339	118	457	04/01/2022
WAKE ISLAND	WAKE ISLAND	01/01	12/31	133	73	206	05/01/2023

*Where meals are included in the lodging rate, a traveler is only allowed a meal rate on the first and last day of travel.

[FR Doc. 2023–08492 Filed 4–20–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[COE–2021–0007]

Development of the National Levee Safety Program

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (USACE) and the Federal Emergency Management Agency (FEMA) launched the new National Levee Safety Program, authorized by the National Levee Safety Act of 2007, in the fall of 2021. This program is different from the USACE Levee Safety Program. The purpose of the National Levee Safety Program is to improve the way levees are managed throughout the United States and its territories to reduce the impact of flooding and improve the resilience of communities behind levees. There are four major components that are intended to work together to accomplish the goals of the program: National Levee Safety Guidelines; Integrated Levee Management; National Levee Database and Data Collection; and Implementation Support. This notice announces the start of Phase 2 which is the solicitation of input on draft products and resources developed based on input received during Phase 1 stakeholder engagement activities.

DATES: Comments related to Phase 2 of the National Levee Safety Program must be submitted on or before June 30, 2023.

ADDRESSES: You may submit comments identified by docket number COE–2021–0007 by any of the following methods:

Federal eRulemaking Portal: Visit *www.regulations.gov* and follow the instructions for submitting comments.

Email: Send an email to *hq-leveesafety@usace.army.mil* and include the docket number, COE–2021–0007, in the subject line of the message.

Mail: U.S. Army Corps of Engineers Vicksburg District, ATTN: Levee Safety Center—Rm. 221, 4155 East Clay Street, Vicksburg, MS 39183.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: If submitting comments through the Federal eRulemaking Portal, direct your comments to docket number COE–2021–0007. All comments received will be included in the public docket without change and may be made available on-line at *www.regulations.gov,* including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through *regulations.gov* or email. The *regulations.gov* website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to USACE without going through *regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov.* All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Ms. Tammy Conforti at 202–365–6586, email *hq-leveesafety@usace.army.mil* or visit *www.leveesafety.org.*

SUPPLEMENTARY INFORMATION: One of the foundations of the National Levee Safety Program is stakeholder engagement with those who are responsible for, are impacted by, or have interest in levees and related policies including federal/Tribal Nations/state/local governments, levee owners/operators, businesses, floodplain managers and residents. The goals for the stakeholder engagement process are to:

1. Understand the needs of the stakeholders this program is intended to support;

2. Provide opportunities for meaningful input to shape decisions and outcomes on program design, components, and products; and,

3. Ensure that the unique challenges related to levees faced by Tribal Nations and underserved communities are well understood and incorporated into solutions.

The purpose of the National Levee Safety Program is to improve the way levees are managed throughout the United States and its territories to reduce the impacts of flooding and improve the resilience of communities behind levees. Managing flood risk is a shared responsibility between federal, Tribal Nations, state, and local entities. USACE and FEMA are interested in the views of the public regarding how the National Levee Safety Program and each of its components can be implemented to best serve those responsible for and impacted by flood risk management efforts. The four major components of the National Levee Safety Program are intended to work together to accomplish the goals of the program: National Levee Safety Guidelines; Integrated Levee Management; National Levee Database and Data Collection; and Implementation Support. There are fact sheets and additional information related to each of these components at *www.leveesafety.org.*

USACE and FEMA continue their commitment to seek feedback from stakeholders at various phases of the program's development. Phase 1 completed in the Spring of 2022, was focused on gathering initial input on the purpose and scope of each of the components of the National Levee Safety Program to better understand the needs and priorities of the public. Phase 2 focuses on soliciting feedback on draft products and options identified during Phase 1 (scoping). Phase 3 is anticipated to occur during the Fall of 2023 with a focus on soliciting feedback on draft program implementation products. During each phase, stakeholders can submit comments through a variety of methods. Each phase will have an open comment period under docket number COE–2021–0007.

For Phase 2, comments are being sought on the progress of the program, content for the National Levee Safety Guidelines, an outline for a new Levee Management Guide for levee owners/operators, a new levee cost brochure, and updates to the National Levee Database. Questions and supplementary information to assist in providing feedback can be found at *www.leveesafety.org.* In addition to the webinars and in-person meetings listed below, a separate set of coordination

activities with national and regional Tribal organizations and Tribal Nations are being planned.

Topic-Specific Webinars: USACE will offer a series of topic-specific webinars that will provide background and supplementary information on the draft products being presented for stakeholder feedback during Phase 2. Webinars are open to anyone, and participants must register by visiting *www.leveesafety.org.* Webinar dates and topics include:

April 11 and May 9, 2023—National Levee Safety Guidelines (1–2:30 p.m. ET)

April 13 and May 11, 2023—Levee Management Resources (1–2:30 p.m. ET)

April 18 and May 31, 2023—State Levee Activities (1–2 p.m. ET)

April 20 and June 6, 2023—National Levee Database (1–2 p.m. ET)

In-person Meetings (National Levee Safety Guidelines): In addition to the webinar series, USACE will host four in-person meetings focused specifically on seeking feedback on sample content from the National Levee Safety Guidelines. Meetings are open to anyone, and participants must register by visiting *www.leveesafety.org.* Each meeting will be limited to 100 people. Dates and locations include:

April 25, 2023—The Westin St. Louis, 811 Spruce Street, St. Louis, MO (12–5 p.m. CT)

May 3, 2023—Houston Marriott South, 9100 Gulf Freeway, Houston, TX (12–5 p.m. CT)

May 17, 2023—Holiday Inn Sacramento Downtown Arena, 300 J Street, Sacramento, CA (12–5 p.m. PT)

May 23, 2023—Embassy Suites by Hilton, 9000 Bartram Avenue, Philadelphia, PA (12–5 p.m. ET)

In-person Meetings (Levee Management Resources): USACE will also host four in-person meetings focused specifically on seeking feedback on draft levee management resources including an outline for a new Levee Management Guide for levee owners/operators, a new levee cost brochure, excerpts from operations and maintenance manual and emergency action plan templates, and updates to the National Levee Database. These meetings are geared towards those with levee responsibilities including Tribal Nations, states, levee owner/operators, local officials, and emergency managers. Participants must register by visiting *www.leveesafety.org,* and each meeting will be limited to 25 people. Dates and locations include:

April 26, 2023—The Westin St. Louis, 811 Spruce Street, St. Louis, MO (12–5 p.m. CT)

May 4, 2023—Houston Marriott South, 9100 Gulf Freeway, Houston, TX (12–5 p.m. CT)

May 18, 2023—Holiday Inn Sacramento Downtown Arena, 300 J Street, Sacramento, CA (12–5 p.m. PT)

May 24, 2023—Embassy Suites by Hilton, 9000 Bartram Avenue, Philadelphia, PA (12–5 p.m. ET)

Michael L. Connor,

Assistant Secretary of the Army, (Civil Works).

[FR Doc. 2023–08397 Filed 4–20–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2023–HQ–0002]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by May 22, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Naval Sea Systems Command and Field Activity Visitor Access Request; NAVSEA Forms 5500/1 and 5500/9; OMB Control Number 0703–0055.

Type of Request: Revision.

NAVSEA Form 5500/1

Number of Respondents: 30,000.
Responses per Respondent: 1.
Annual Responses: 30,000.
Average Burden per Response: 5 minutes.
Annual Burden Hours: 2,500.

NAVSEA Form 5500/9

Number of Respondents: 1,980.
Responses per Respondent: 1.
Annual Responses: 1,980.
Average Burden per Response: 1 minute.
Annual Burden Hours: 33.

Total

Number of Respondents: 31,980.
Annual Responses: 31,980.
Annual Burden Hours: 2,533.

Needs and Uses: The information collection requirement is necessary for Naval Sea Systems Command and Naval Sea Systems Command Field Activities at Washington Navy Yard, Washington, DC to verify that visitors have the appropriate credentials, clearance level, and need-to know to be granted access to NAVSEA spaces. Information is also collected for NAVSEA Security to keep a record of visitors to NAVSEA spaces. Individuals who wish to visit the NAVSEA Headquarters (HQ) building will need to sign a NAVSEA Form 5500/1, ''NAVSEA Visitor's Sign In/Out Sheet,'' at the NAVSEA Visitor Control Center (VCC). Respondents are visitors conducting official business or attending official or representational events and may be either escorted or unescorted. Respondents are Navy support contractors, individuals from other agencies visiting the Command and Field Activities, and various members of the public. Contractors may also complete and present a NAVSEA Form 5510/9, ''NAVSEA Headquarters Contractor Access Request,'' to have their CAC coded for daily access to NAVSEA facilities without having to report to the VCC. The NAVSEA 5510/9 must be renewed yearly or at the end of the contract.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are

received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: April 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08508 Filed 4–20–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2023–HQ–0003]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by May 22, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Military Housing Virtual Assistance; OMB Control Number 0703–0066.

Type of Request: Revision.

HOMES.mil Listings

Number of Respondents: 10,491.
Responses per Respondent: 5.
Annual Responses: 52,455.
Average Burden per Response: 20 minutes.
Annual Burden Hours: 17,485.

Housing Early Assistance Tool (HEAT)

Number of Respondents: 1,938.
Responses per Respondent: 1.
Annual Responses: 1,938.
Average Burden per Response: 10 minutes.
Annual Burden Hours: 323.

Total

Number of Respondents: 12,429.
Annual Responses: 54,393.
Annual Burden Hours: 17,808.

Needs and Uses: Title 10 U.S.C. 1056 requires the provision of relocation assistance to military members and their families. Requirements include provision of information on housing costs/availability and home finding services. The Enterprise Military Housing System (eMH) includes a public website (*HOMES.mil*) which collects information needed to facilitate military personnel searching for suitable community rental housing within close proximity to military installations. Property owners may use the *HOMES.mil* web application to list properties available for lease by service members and their families. They also have the option to call installation military housing offices and provide the information required to create a listing over the phone. Additionally, service members and their dependents may use the *HOMES.mil* Housing Early Assistance Tool (HEAT) to request information and housing services from the installation military housing office.

Affected Public: Business or other for-profit; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: April 18, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–08511 Filed 4–20–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0156]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Evaluation of Career and Technical Education Under Perkins V

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 22, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Michael Fong, 202–245–8407.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how

might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Evaluation of Career and Technical Education under Perkins V.

OMB Control Number: 1850–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 260.

Total Estimated Number of Annual Burden Hours: 279.

Abstract: The Strengthening Career and Technical Education for the 21st Century Act (Perkins V) mandates a national evaluation of career and technical education (CTE) to examine key aspects of CTE across the nation, including CTE policy and program implementation, participation and outcomes, and effectiveness. This new data collection will consist of two surveys that will be conducted in 2023 to collect information about CTE policy and program implementation: (1) a survey of all state directors of CTE and (2) a nationally representative sample of district coordinators of CTE.

Dated: April 18, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–08490 Filed 4–20–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0067]

Agency Information Collection Activities; Comment Request; RSA–227, Annual Client Assistance Program Performance Report

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 20, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0067. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact April Trice, 202–245–6074.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: RSA–227, Annual Client Assistance Program Performance Report.

OMB Control Number: 1820–0528.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 912.

Abstract: The Annual Client Assistance Program (CAP) Performance Report (RSA–227) is used to analyze and evaluate the CAP Program administered by eligible grantees throughout the States. The Rehabilitation Act of 1973 (Rehabilitation Act), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), requires each State to have a CAP in effect to receive payments under the Rehabilitation Act. Section 112 of the Rehabilitation Act authorizes CAP grantees to provide information to individuals with disabilities regarding the services and benefits available under the Rehabilitation Act and the rights afforded them under Title I of the Americans with Disabilities Act. In addition, CAP grantees are authorized to provide advocacy and legal representation to individuals seeking or receiving services under the Rehabilitation Act to resolve disputes with programs providing such services, including vocational rehabilitation services.

Dated: April 18, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–08462 Filed 4–20–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0003]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Survey of Postgraduate Employment for the Foreign Language and Area Studies (FLAS) Fellowship Program

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of

1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 22, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Dana Sapatoru, 202–987–1944.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Survey of Postgraduate Employment for the Foreign Language and Area Studies (FLAS) Fellowship program.

OMB Control Number: 1840–0829.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 8,000.

Total Estimated Number of Annual Burden Hours: 1,500.

Abstract: The Foreign Language and Area Studies (FLAS) Fellowships program is authorized by 20 U.S.C. 1121(b) and provides allocations of academic year and summer fellowships to institutions of higher education or consortia of institutions of higher education to assist meritorious undergraduate and graduate students undergoing training in modern foreign languages and related area or international studies. This information collection is a survey of FLAS fellows required by 20 U.S.C. 1121(d) which states ''The Secretary shall assist grantees in developing a survey to administer to students who have completed programs under this subchapter to determine postgraduate employment, education, or training. All grantees, where applicable, shall administer such survey once every two years and report survey results to the Secretary.'' There is an increase in the number of respondents for this collection, which is the result of transitioning from a cross-sectional to a longitudinal survey.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–08416 Filed 4–20–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0066]

Agency Information Collection Activities; Comment Request; RSA–509, Annual Protection and Advocacy of Individual Rights Program Performance Report

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 20, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0066. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Samuel Pierre, 202–245–6488.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: RSA–509, Annual Protection and Advocacy of Individual Rights Program Performance Report.

OMB Control Number: 1820–0627.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 912.

Abstract: The Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report (Form RSA–509) will be used to analyze and evaluate the PAIR Program administered by eligible protection and advocacy (P&A) systems in states and the P&A serving the American Indian Consortium. These systems provide services to eligible individuals with disabilities to protect their legal and human rights. RSA uses the form to meet specific data collection requirements of Section 509(k) of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. 794e(k), and its implementing Federal regulations at 34 CFR 381.32. The data reported by PAIR grantees using the form include demographic information about the individuals served, information describing the types of issues addressed through individual and systemic advocacy, and information about the results of these activities. PAIR grantees must report annually using the form that is due on or before December 30 each year.

The collection of information through Form RSA–509 is necessary for RSA to furnish the President and Congress with data on the provision of PAIR services, as required by sections 13(a) and 509(k) of the Rehabilitation Act. Data reported by PAIR grantees through the RSA–509 have also helped RSA to establish a sound basis for future funding requests. RSA also uses data from the form to evaluate the effectiveness of eligible systems within individual States and the PAIR serving the American Indian Consortium in meeting annual priorities and objectives, pursuant to section 13(b) of the Rehabilitation Act. Last, RSA has found the RSA–509 data useful in projecting trends in the provision of services from year to year.

Several respondents are private not-for-profit organizations. RSA included the respondents and the national organization that represents them (National Disability Rights Network (NDRN)) in the initial development of this collection of information in an effort to ensure that the information requested could be provided with minimal burden to the respondents.

Dated: April 18, 2023.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–08449 Filed 4–20–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Monday, May 15, 2023; 1:00 p.m.–4:15 p.m. EDT.

Tuesday, May 16, 2023; 9:00 a.m.–3:30 p.m. EDT.

ADDRESSES: Crowne Plaza Charleston Airport, 48831 Tanger Outlet Blvd., North Charleston, SC 29841.

The meeting will also be streamed on YouTube, no registration is necessary; links for the livestream can be found on the following website: *https://cab.srs.gov/srs-cab.html.*

Attendees should check the website listed above for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Amy Boyette, Office of External Affairs, U.S. Department of Energy (DOE), Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–6120; or Email: *amy.boyette@srs.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, May 15, 2023

Chair Update
Agency Updates
Subcommittee Updates
Program Presentations
Board Business
Public Comments

Tuesday, May 16, 2023

Program Presentations
Public Comments
Board Business, Voting

Public Participation: The meeting is open to the public. It will be held strictly following COVID–19 precautionary measures. To provide a safe meeting environment, seating may be limited; attendees should register for in-person attendance by sending an email to *srscitizensadvisoryboard@srs.gov* no later than 4:00 p.m. EDT on Friday, May 12, 2023. The EM SSAB, Savannah River Site, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Amy Boyette at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board via email either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should submit their request to *srscitizensadvisoryboard@srs.gov.* Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. Comments will be accepted after the meeting, by no later than 4:00 p.m. EDT on Tuesday, May 30, 2023. Please submit comments to *srscitizensadvisoryboard@srs.gov.* The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make oral public comments will be provided a maximum of five minutes to present their comments. Individuals wishing to submit written public comments should email them as directed above.

Minutes: Minutes will be available by emailing or calling Amy Boyette at the email address or telephone number listed above. Minutes will also be available at the following website: *https://cab.srs.gov/srs-cab.html.*

Signed in Washington, DC, on April 17, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–08461 Filed 4–20–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that

public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, May 17, 2023; 1:00 p.m. to 5:00 p.m. MDT

ADDRESSES: This hybrid meeting will be open to the public in person and via WebEx. To attend virtually, please contact the Northern New Mexico Citizens Advisory Board (NNMCAB) Executive Director (below) no later than 5:00 p.m. MDT on Friday, May 12, 2023.

Board members, Department of Energy (DOE) representatives, agency liaisons, and Board support staff will participate in-person, following COVID–19 precautionary measures, at: Fuller Lodge Art Center, 2132 Central Avenue, Los Alamos, NM 87544.

Attendees should check with the NNMCAB Executive Director (below) for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Menice B. Santistevan, NNMCAB Executive Director, by Phone: (505) 699–0631 or Email: *menice.santistevan@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- DOE Environmental Management Presentation
- Agency Updates

Public Participation: The in-person/online virtual hybrid meeting is open to the public in person or virtually, via WebEx. Written statements may be filed with the Board no later than 5:00 p.m. MDT on Friday, May 12, 2023, or within seven days after the meeting by sending them to the NNMCAB Executive Director at the aforementioned email address. Written public comments received prior to the meeting will be read into the record. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit public comments should follow as directed above.

Minutes: Minutes will be available by emailing or calling Menice Santistevan, NNMCAB Executive Director, at *menice.santistevan@em.doe.gov* or at (505) 699–0631.

Signed in Washington, DC, on April 17, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–08460 Filed 4–20–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration; Notice of Intent To Prepare a Site-Wide Environmental Impact Statement for Continued Operation of Sandia National Laboratories, New Mexico

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the United States (U.S.) Department of Energy (DOE), announces its intent to prepare a new Site-Wide Environmental Impact Statement (SWEIS) for the Continued Operation of Sandia National Laboratories, New Mexico (SNL/NM SWEIS; DOE/EIS–0556). NNSA will prepare the SNL/NM SWEIS in accordance with the National Environmental Policy Act of 1969 (NEPA), and the Council on Environmental Quality (CEQ) and DOE regulations implementing NEPA. The SNL/NM SWEIS will analyze the potential environmental impacts of the reasonable alternatives for continuing operations of SNL/NM for approximately the next 15 years. While SNL has operations outside of New Mexico, the SNL/NM SWEIS is limited to activities at SNL/NM within the Kirtland Air Force Base (KAFB) and the Albuquerque area. The purpose of this Notice is to encourage public participation in the SNL/NM SWEIS process and to invite comments on the scope of analysis, including the range of alternatives, associated actions, and environmental issues that should be considered in the SNL/NM SWEIS. Following completion of the SNL/NM SWEIS, NNSA will issue a Record of Decision (ROD) announcing any decisions associated with the SNL/NM SWEIS.

DATES: NNSA invites federal agencies, tribes, state and local governments, industry, organizations, public interest groups, local businesses, and members of the general public to submit comments on the scope of the SNL/NM SWEIS through June 5, 2023 (the Comment Period). NNSA will consider all comments on the scope of the SNL/NM SWEIS received or postmarked during the Comment Period. Comments received or postmarked after the Comment Period ends will be considered to the extent practicable. NNSA will accept public comments on the proposed scope of the SNL/NM SWEIS in written and verbal form, and it will give equal weight to comments provided by either method. NNSA will conduct two public scoping meetings at which verbal comments may be provided, including one in-person meeting with a virtual link for listen-in only and one virtual meeting, scheduled as follows:

- *In-person Meeting:* Tuesday, May 9, 2023; 6:30–8:50 p.m., Mountain Daylight Time, preceded by a poster session starting at 5:30 p.m., at the New Mexico Veterans Memorial, Museum & Conference Center, 1100 Louisiana Blvd. SE, Albuquerque, NM 87108. Listen-in for May 9: *https://www.zoomgov.com/j/1618755753,* toll-free 833–568–8864, Meeting ID: 161 875 5753.
- *Virtual Meeting:* Thursday, May 11, 2023, 6:30–8:50 p.m., Mountain Daylight Time, Listen-in and Participation for May 11: *https://www.zoomgov.com/j/1608652437,* toll-free 833–568–8864, Meeting ID: 160 865 2437.
- Further information about the public scoping meetings, including any changes in dates, places, or times, will be posted on the NNSA NEPA Reading Room website at: *https://www.energy.gov/nnsa/nnsa-nepa-reading-room.*

ADDRESSES: Written comments on the scope of the SNL/NM SWEIS or requests for information related to the SNL/NM SWEIS may be sent via postal mail to SNL/NM SWEIS Comments, National Nuclear Security Administration, Sandia Field Office, P.O. Box 5400, Albuquerque, NM 87185, or by email to: *SNL-SWEIS@nnsa.doe.gov.* Before including your address, phone number, email address, or other personally identifiable information in your comment, please be advised that your entire comment—including your personally identifiable information—might be made publicly available. If you wish for NNSA to withhold your name and/or other personally identifiable information, please state this prominently at the beginning of your comment. You may submit comments anonymously.

FOR FURTHER INFORMATION CONTACT: For further information about this Notice, please contact Dr. Adria Bodour, NEPA Compliance Officer, Sandia Field Office, by postal mail at National Nuclear Security Administration, Sandia Field Office, P.O. Box 5400, Albuquerque, NM 87185, by phone (505) 845–6314, or by email at *SNL-SWEIS@nnsa.doe.gov* or *adria.bodour@nnsa.doe.gov.* This Notice, related NEPA documents, and additional information about the NEPA process are available on the NNSA NEPA Reading Room website at: *https://*

www.energy.gov/nnsa/nnsa-nepa-reading-room. Information will also be posted on the SNL/NM website at: *https://www.sandia.gov/about/environment.*

SUPPLEMENTARY INFORMATION:

Background

SNL/NM is managed and operated as a Federally Funded Research and Development Center (FFRDC), as defined in Federal Acquisition Regulation 35.017, and a national security laboratory, as defined by 50 U.S.C. 2471, whose multidisciplinary research capabilities, tools, and teams of experts focus on the nation's priorities in science, energy, and national security. The purpose of FFRDCs is to bring scientific and technical expertise to bear on pressing national challenges. SNL personnel participate in the formal annual weapons certification process of the nuclear weapons stockpile. Through routine surveillance of the systems and annual stockpile assessment, weapons issues that could lead to future performance degradation, such as aging effects, are discovered and addressed. SNL/NM personnel also focus on developing technologies to sustain, modernize, and protect the nuclear arsenal; prevent the spread of weapons of mass destruction; defend against terrorism; protect the national infrastructure; ensure stable energy and water supplies; and provide new capabilities to the Department of Defense.

SNL personnel also perform research and development in science, technology, and engineering programs. SNL/NM operations are primarily sponsored by NNSA, but SNL personnel also do work for other governmental agencies and partner with a wide variety of entities.

SNL/NM is located within KAFB to the southeast of Albuquerque, NM. KAFB spans approximately 50,000 acres located at the foothills of the Manzano Mountains. The SNL/NM campus covers approximately 16,000 acres on KAFB and contains approximately 900 buildings with approximately seven million square feet. The SNL/NM eastern boundary is U.S. Forest Service land, and the southern boundary is Pueblo of Isleta land. The new SNL/NM SWEIS will analyze SNL/NM operations within KAFB and the City of Albuquerque area where SNL/NM has leased facilities. SNL/NM contains five secure technical areas on DOE fee-owned land as well as buildings and structures on properties permitted from KAFB, including Coyote Test Field, National Solar Thermal Test Facility, Robotic Vehicle Range, remote testing sites, and others.

SNL/NM currently operates under a SWEIS issued in 1999, *Final Site-Wide EIS for Sandia National Laboratories, New Mexico* (1999 SNL/NM SWEIS; DOE/EIS–0281), its four supplement analyses (SAs) (DOE/EIS–0281–SA–01, 2001; DOE/EIS–0281–SA–02, 2002; DOE/EIS–0281–SA–03, 2004; and DOE/EIS–0281–SA–04, 2006), and other project-specific NEPA documents.

The 1999 SNL/NM SWEIS examined existing and potential impacts to the environment from ongoing and anticipated future NNSA operations conducted over approximately a 10-year period for SNL/NM operations within and around KAFB. Since issuance of the 1999 SNL/NM SWEIS and its associated ROD (64 FR 69996; December 15, 1999), SNL/NM operations have evolved and additional information about the SNL/NM environmental setting has become available. Security requirements have also evolved in response to changes in recognized threats.

An SA is a document prepared pursuant to DOE NEPA regulations (10 CFR 1021.314(c)) to determine whether a supplemental or new EIS should be prepared, or whether no further NEPA documentation is required. Three of the four SNL/NM SAs based on the 1999 SNL/NM SWEIS dealt with implementing new or changed operations and replacing facilities; the fourth SA (DOE/EIS–028–SA–04, August 2006), prepared pursuant to 10 CFR 1021.330(d), assessed whether potential environmental impacts from site operations remained within those projected in the 1999 SNL/NM SWEIS for the level of operations selected in the ROD. Based on each of these SAs, NNSA determined that a new SWEIS was not necessary.

Subsequently, given the length of time since the previous SWEIS was issued, new information, and the evolution of mission needs, NNSA determined that preparation of a new SWEIS was appropriate. On June 24, 2011, NNSA issued a notice of intent (NOI) to prepare a new SWEIS for SNL/NM (76 FR 37100). NNSA's completion of that SWEIS, however, was delayed by competing program and resource priorities. Since the NOI was issued in 2011, mission needs have continued to evolve and further information has become available. Consequently, NNSA has now determined that preparation of a new SWEIS with a fresh scoping process would best serve the purposes of NEPA by providing NNSA and the public with the most current environmental and programmatic information. Accordingly, NNSA has administratively canceled the SWEIS originally announced in 2011 and will prepare a new SWEIS, DOE/EIS–0556.

Purpose and Need for Agency Action

The purpose and need for continued operation of SNL/NM has not changed from those identified in the 1999 SNL/NM SWEIS and continues to include supporting NNSA and other DOE missions as directed by Congress and the President. Currently, facilities and capabilities that support many NNSA and other DOE mission priorities are found only at SNL/NM. NNSA needs to continue SNL/NM operations to meet its core mission requirements. A further purpose of the continued operation of SNL/NM is to provide capabilities available at the site in support of strategic partnership projects, under which SNL/NM oversees national security-related research, development, and testing programs, and conducts work for other entities, including other federal and state government agencies, industry, and academic institutions.

SNL/NM operations support the following NNSA mission priorities: (1) to enhance U.S. national security through the military application of nuclear energy, (2) to maintain and enhance the safety, reliability, and performance of the U.S. nuclear weapons stockpile, including the ability to design, produce, and test, in order to meet national security requirements, (3) to promote international nuclear safety and nonproliferation, (4) to reduce global danger from weapons of mass destruction; and (5) to support U.S. leadership in science and technology (50 U.S.C. 2401).

SNL/NM operations support NNSA national security objectives through the engineering of nuclear weapons components and other nuclear and non-nuclear activities. NNSA missions for SNL/NM have evolved over time in response to national needs, and NNSA expects that evolution will continue for the foreseeable future. NNSA, on behalf of the U.S. Government, requires SNL/NM management and operating contractor to continue providing support for NNSA mission lines, programs, and projects in national security, energy resources, environmental quality, and science and technology. SNL personnel maintain specific core competencies in activities associated with research, development, design, and surveillance of nuclear weapons; supports the assessment and certification of their safety, reliability, and performance; and produces components for the stockpile. The continued operation of SNL/NM is

critical to NNSA's ability to meet its missions.

SNL/NM operations also include non-weapons research and science services in multiple areas, including waste management, environmental restoration, hazardous and radioactive material transportation, energy efficiency and renewable energy, nuclear energy, fossil energy, magnetic fusion, basic energy sciences, supercomputing, and biological and environmental research. SNL/NM operations are needed to support other important DOE missions, including energy security and long-term energy needs, transportation research and development, homeland infrastructure security and resiliency, and advanced science and technology. Much of the same infrastructure used to support national security supports these other missions.

Preliminary Alternatives

The scoping process is an opportunity for the public to assist NNSA in determining the alternatives, issues, and analyses that should be included in the SNL/NM SWEIS. NNSA welcomes specific comments or suggestions on the content of these alternatives or on other alternatives that should be considered. NNSA has identified a preliminary set of alternatives and issues for evaluation in the SNL/NM SWEIS below; during the development of the SWEIS, NNSA could identify and include other reasonable alternatives.

No-Action Alternative

Under the No-Action Alternative, current operations throughout SNL/NM that support currently assigned missions would continue. NEPA regulations require analysis of the No-Action Alternative to provide a benchmark for comparison with the environmental effects of action alternatives. This alternative represents maintaining the status quo and would include the programs and activities for which NEPA reviews have been completed and decisions have been made.

Modernized Operations Alternative

Under the Modernized Operations Alternative, existing programs and activities would continue and be supported by modernizing facilities. This alternative includes the scope of the No-Action Alternative, as described above, plus additional modernization activities. This alternative includes (1) construction of replacement facilities, (2) upgrades to existing facilities and infrastructure, and (3) decontamination, decommissioning, and demolition (DD&D) projects. Under this alternative, NNSA would replace facilities that are approaching their end-of-life, upgrade facilities to extend their lifetimes, and improve work environments to enable NNSA to meet operational requirements. The alternative would also include projects that would reduce the carbon footprint of operations and/or are net zero initiatives. The proposed DD&D of older facilities would eliminate excess facilities and reduce costs and risks. This alternative would not expand capabilities and operations at SNL/NM beyond those that currently exist. Examples of projects that will likely be proposed and analyzed in the SNL/NM SWEIS under this alternative include: (1) Neutron Generator Enterprise Consolidation, which would consolidate operations from existing facilities into a new facility that would have improved workflow; and (2) Weapons Component Engineering Capability, which would consolidate capabilities from existing facilities into a new facility.

Expanded Operations Alternative (NNSA's Preferred Alternative)

The Expanded Operations Alternative would include the modernization actions included in the Modernized Operations Alternative, as described above. This alternative would expand operations and missions to respond to future national security challenges and meet increasing requirements. This alternative includes (1) construction and operation of new facilities and (2) upgrades to existing facilities that result in changing the nature and capabilities of these facilities. This alternative would expand capabilities at SNL/NM beyond those that currently exist. Examples of projects that will likely be proposed and analyzed in the SNL/NM SWEIS under this alternative include: (1) Combined Radiation Environments for Survivability Testing (CREST) facility, which would replace the Annular Core Research Reactor (ACRR), which is reaching its end-of-life. Because the CREST facility would expand the capabilities and support additional missions compared to the existing ACRR, it would be proposed under the Expanded Operations Alternative; and (2) Next Generation Pulsed Power Facility, which would address important nuclear weapon primary and secondary physics questions and would produce large x-ray and neutron outputs that would help certify weapons survivability in hostile environments in larger test objects than possible today. Such a capability does not currently exist at SNL/NM.

In the Draft SNL/NM SWEIS, NNSA will identify and analyze other actions and specific projects that could expand the capabilities at SNL/NM.

Other Alternatives

Although the 1999 SNL/NM SWEIS included a Reduced Operations Alternative, NNSA does not plan to analyze such an alternative in the new SNL/NM SWEIS. NNSA does not consider a reduction in operations to be a reasonable alternative under NEPA because it does not meet the purpose and need for agency action. That is, under a reduced operations alternative, NNSA would not be able to meet its essential mission needs for the foreseeable future. NNSA welcomes comments on this and any other alternative the public thinks are reasonable and should be analyzed in the SWEIS.

Preliminary Identification of Environmental Issues

The issues listed below have been identified for analysis in the SNL/NM SWEIS. The list is tentative and intended to facilitate public comment on the scope of the document. It is not intended to be all inclusive, nor does it imply any predetermination of potential impacts. NNSA invites suggestions for the addition or deletion of items on this list.

- Potential effects on the public and workers from exposures to radiological and hazardous materials during normal operations, construction, reasonably foreseeable accidents (including from natural phenomena hazards), and intentional destructive acts;
- Impacts on surface water, groundwater, floodplain and wetlands, and on water use and quality;
- Impacts on air quality from potential releases of radiological and non-radiological pollutants;
- Impacts associated with climate change, including greenhouse gas emissions and reductions, potential effects of climate change on analyzed alternatives, and potential mitigation measures;
- Impacts to plants and animals and their habitats, including species that are federally or state listed as threatened or endangered, or of special concern;
- Impacts on physiography, topography, geology, and soil characteristics;
- Impacts to cultural resources, such as those that are historic, prehistoric, archaeological, scientific, or paleontological;
- Socioeconomic impacts to affected communities;
- Environmental justice impacts, particularly whether or not activities at SNL/NM would have a

disproportionately high and adverse effect on minority and/or low-income populations;

- Impacts on land use and applicable plans and policies;
- Impacts from traffic and transportation of radiological and hazardous materials/waste;
- Pollution prevention and materials, and waste management practices and activities;
- Impacts of SNL/NM facilities on visual aesthetics of the surrounding communities and ambient environment;
- Impacts of noise and vibration on the surrounding communities and ambient environment;
- Impacts to community services, including fire protection, police protection, schools, and solid waste disposal to landfills;
- Impacts from the use of utilities, including water and electricity consumption, fuel use, sewer discharges, and resource conservation;
- Impacts from site contamination and remediation;
- Unavoidable adverse impacts;
- Environmental compliance and inadvertent releases;
- Energy conservation, renewable energy, and sustainability;
- Short-term uses and long-term productivity;
- Irreversible and irretrievable commitment of resources;
- Cumulative effects of past, present, and reasonably foreseeable future actions; and
- Mitigation commitments.

NEPA Requirements and the SWEIS Process

DOE NEPA implementing regulations at 10 CFR 1021.330(c), state: ''[A]s a matter of policy when not otherwise required, DOE shall prepare site-wide EISs for certain large, multiple-facility DOE sites; DOE may prepare EISs or EAs for other sites to assess the impacts of all or selected functions at those sites.'' NNSA has determined that preparation of a new SWEIS for SNL/NM is appropriate and is preparing the SNL/NM SWEIS in accordance with NEPA, and CEQ and DOE regulations implementing NEPA (40 CFR parts 1500–1508 and 10 CFR part 1021, respectively).

NNSA will solicit public input at two points in the SNL/NM SWEIS process: during the scoping process announced by this Notice, and after issuance of a draft SNL/NM SWEIS. The scoping process is intended to involve all interested parties, including agencies (federal, state, and local), public interest groups, tribes, local businesses, industry, organizations, and members of the public. Interested parties are invited to participate in the SNL/NM SWEIS process to refine the preliminary alternatives and identify environmental issues for analysis. NNSA will consider all comments received during the Comment Period in defining the scope of the SNL/NM SWEIS. Comments on the proposed scope may be provided verbally at the two public scoping meetings described under the **DATES** section, or in writing by any of the means described under the **ADDRESSES** section. The scoping meetings will provide the public with an opportunity to present comments, ask questions, and discuss issues with NNSA officials regarding the SNL/NM SWEIS.

Following the scoping process announced in this Notice, and after consideration of comments received during scoping, NNSA will prepare a Draft SNL/NM SWEIS. NNSA anticipates issuing the Draft SNL/NM SWEIS to the public in 2024. NNSA will announce the availability of the Draft SNL/NM SWEIS in the **Federal Register** and local media outlets. NNSA will consider comments received on the Draft document and will address them in the Final SNL/NM SWEIS, which the NNSA anticipates issuing to the public in 2025. NNSA will then issue a ROD no sooner than 30 days after publication by the Environmental Protection Agency of a Notice of Availability of the Final SNL/NM SWEIS.

Preparation of the SNL/NM SWEIS will require participation of other federal agencies. Accordingly, NNSA invites agencies with jurisdiction by law or special expertise to participate in the SNL/NM SWEIS process. NNSA has invited the U.S. Air Force and U.S. Forest Service to participate as cooperating agencies in preparation of the document.

Signing Authority

This document of the Department of Energy was signed on April 17, 2023, by Jill Hruby, Under Secretary for Nuclear Security and Administrator, NNSA, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 18, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–08459 Filed 4–20–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at North American Electric Reliability Corporation Standard Drafting Team Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation Project 2021–07 Extreme Cold Weather Grid Operations, Preparedness, and Coordination Standard Drafting Team Meetings on:

April 18, 2023 (1 p.m.–3 p.m. eastern time)

April 20, 2023 (1 p.m.–3 p.m. eastern time)

April 27, 2023 (1 p.m.–2:30 p.m. eastern time)

Further information regarding these meetings may be found at: *https://www.nerc.com/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceeding:

Docket No. RD23–1–000 Extreme Cold Weather Reliability Standards EOP–011–3 and EOP–012–1

For further information, please contact Chanel Chasanov, 202–502–8569, or *chanel.chasanov@ferc.gov.*

Dated: April 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08467 Filed 4–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–72–000.

Applicants: Chevelon Butte RE LLC, Arizona Public Service Company.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Chevelon Butte RE LLC, et al.

Filed Date: 4/14/23.

Accession Number: 20230414–5271.

Comment Date: 5 p.m. ET 5/5/23.

Docket Numbers: EC23–73–000.

Applicants: 83WI 8me, LLC, Lily Solar LLC, Lily Solar Lessee, LLC, Elite Aggregator L.P.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of 83WI 8me, LLC, et al.

Filed Date: 4/14/23.

Accession Number: 20230414–5282.

Comment Date: 5 p.m. ET 5/5/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–122–000.

Applicants: Sagebrush ESS II, LLC.

Description: Sagebrush ESS II, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/14/23.

Accession Number: 20230414–5236.

Comment Date: 5 p.m. ET 5/5/23.

Docket Numbers: EG23–123–000.

Applicants: Caden Energix Endless Caverns, LLC.

Description: Caden Energix Endless Caverns, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/17/23.

Accession Number: 20230417–5087.

Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: EG23–124–000.

Applicants: Caden Energix Axton LLC.

Description: Caden Energix Axton LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/17/23.

Accession Number: 20230417–5096.

Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: EG23–125–000.

Applicants: Roundhouse Interconnect, LLC.

Description: Roundhouse Interconnect, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/17/23.

Accession Number: 20230417–5102.

Comment Date: 5 p.m. ET 5/8/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–720–000.

Applicants: DTE Electric Company.

Description: Supplement to December 13, 2022, Request for Authorization to Engage in Affiliate Transactions; Request for Waivers; and Request for Privileged and Confidential Treatment of DTE Electric Company.

Filed Date: 4/13/23.

Accession Number: 20230413–5201.

Comment Date: 5 p.m. ET 4/20/23.

Docket Numbers: ER23–1647–000.

Applicants: Idaho Power Company.

Description: Compliance filing: Attachment H—Compliance Filing to be effective 4/27/2022.

Filed Date: 4/17/23.

Accession Number: 20230417–5001.

Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: ER23–1648–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA and ICSA, SA Nos. 6354 and 6355; Queue No. AD1–130 to be effective 6/17/2023.

Filed Date: 4/17/23.

Accession Number: 20230417–5037.

Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: ER23–1649–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 6030; Queue No. AG1–145 to be effective 6/19/2023.

Filed Date: 4/17/23.

Accession Number: 20230417–5057.

Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: ER23–1652–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 6188; Queue Nos. AD2–172/AE2–035 (amend) to be effective 6/17/2023.

Filed Date: 4/17/23.

Accession Number: 20230417–5099.

Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: ER23–1653–000.

Applicants: Jersey Central Power & Light Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Jersey Central Power & Light Company submits tariff filing per 35.13(a)(2)(iii: JCP&L Request for Order Authorizing Abandoned Plant Incentive to be effective 6/17/2023.

Filed Date: 4/17/23.

Accession Number: 20230417–5106.

Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: ER23–1654–000.

Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Basin Electric Notice of Cancellation of Service Agreement No. 30 (EDF Trading) to be effective 6/17/2023.

Filed Date: 4/17/23.

Accession Number: 20230417–5110.

Comment Date: 5 p.m. ET 5/8/23.

Docket Numbers: ER23–1655–000.

Applicants: El Paso Electric Company.

Description: Compliance filing: Compliance—Market-Based Rate Tariff to be effective 4/5/2023.

Filed Date: 4/17/23.

Accession Number: 20230417–5137.

Comment Date: 5 p.m. ET 5/8/23,

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM23–4–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Application of Wabash Valley Power Association, Inc. to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.

Filed Date: 4/17/23.

Accession Number: 20230417–5186.

Comment Date: 5 p.m. ET 5/8/23.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD23–2–001; AD21–15–000.

Applicants: North American Electric Reliability Corporation.

Description: North American Electric Reliability Corporation submits Report on the Evaluation of the Physical Security Reliability Standard and Physical Security Attacks to the Bulk-Power System.

Filed Date: 4/14/23.

Accession Number: 20230414–5192.

Comment Date: 5 p.m. ET 5/15/23.

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

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

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

Dated: April 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08474 Filed 4–20–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at North American Electric Reliability Corporation Standard Drafting Team Meeting

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation Project 2021–07 Extreme Cold Weather Grid Operations, Preparedness, and Coordination Standard Drafting Team Meeting on: May 2, 2023 (1:00 p.m.–3:00 p.m. eastern time)

Further information regarding these meetings may be found at: *https://www.nerc.com/Pages/Calendar.aspx.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceeding:

Docket No. RD23–1–000 Extreme Cold Weather Reliability Standards EOP–011–3 and EOP–012–1

For further information, please contact Chanel Chasanov, 202–502–8569, or *chanel.chasanov@ferc.gov.*

Dated: April 17, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–08470 Filed 4–20–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–066]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed April 10, 2023 10 a.m. EST

Through April 17, 2023 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20230053, Draft, FERC, VA, Virginia Reliability Project and Commonwealth Energy Connector Project, Comment Period Ends: 06/05/2023, Contact: Office of External Affairs 866–208–3372.

EIS No. 20230054, Final, USFWS, AZ, ADOPTION—4FRI Rim Country Project, Review Period Ends: 05/22/2023, Contact: Nicole Jimenez 505–238–7154.

The Fish and Wildlife Service (USFWS) has adopted the Forest Service's Final EIS No.20220116, filed 08/06/2022 with the Environmental Protection Agency. The USFWS was not a cooperating agency on this project. Therefore, republication of the document is necessary under Section 1506.3(b)(2) of the CEQ regulations.

EIS No. 20230055, Draft, BLM, NAT, Programmatic Environmental Impact Statement Addressing Vegetation Treatments Using Herbicides, Comment Period Ends: 06/05/2023, Contact: Seth Flanigan 208–373–4094.

EIS No. 20230056, Final, EPA, PRO, ADOPTION—PROGRAMMATIC—Habitat Restoration Activities Implemented throughout the Coastal United States, Review Period Ends: 05/22/2023, Contact: Sharon Osowski 214–665–7506.

The Environmental Protection Agency (EPA) has adopted the National Oceanic and Atmospheric Administration's Final EIS No.20150171, filed 06/11/2015 with the Environmental Protection Agency. The EPA was not a cooperating agency on this project. Therefore, republication of the document is necessary under Section 1506.3(b)(2) of the CEQ regulations.

Dated: April 17, 2023.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–08487 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10893–01–R5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Waelz Sustainable Products, LLC, Cass County, Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Order on petition for objection to a Clean Air Act Title V operating permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated March 14, 2023, denying an August 6, 2021, Petition from Cass County Citizens Coalition (the Petitioner). The Petition requested that EPA object to a Clean Air Act (CAA) title V operating permit issued by the Indiana Department of Environmental Management (IDEM), to Waelz Sustainable Products, LLC (WSP), located in Cass County, Indiana.

ADDRESSES: The final Order, the Petition, and other supporting information are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section before visiting the Region 5 office. Additionally, the final Order and Petition are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Paymon Danesh, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6219, *danesh.paymon@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issues arose after this period.

EPA received the August 6, 2021, Petition from the Petitioner requesting that EPA object to the issuance of operating permit no. 017–42728–00056 issued by IDEM to WSP. The Petition alleged that: (1) the permit is unlawful because WSP is a secondary metal production plant subject to the

Prevention of Significant Deterioration Program; (2) the permit is unlawful for not including a specific timeframe for restoring normal operation of bag leak detection systems after a malfunction or repair; (3) the permit is unlawful because it relies on deficient and erroneous calculations; (4) the permit is unlawful because it fails to assure continuous compliance with emission limitations; and (5) the permit is unlawful because its issuance violated public participation requirements.

On March 14, 2023, the EPA Administrator issued an Order denying the Petition. The Order explains the basis for EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review of the Administrator's March 14, 2023, Order shall be filed in the United States Court of Appeals for the appropriate circuit no later than June 20, 2023.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 17, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–08482 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2023–0243; FRL–10914–01–OGC]

Proposed Settlement Agreement, Clean Water Act and Administrative Procedure Act Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with the EPA Administrator's March 18, 2022, memorandum regarding ''Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency,'' notice is hereby given of a proposed settlement agreement that would resolve *Chesapeake Bay Foundation, Inc. et al.* v. *U.S. EPA et al.,* No. 1:20–cv–2529 (D.D.C.). On September 10, 2020, four states—Maryland, Virginia, Delaware, and the District of Columbia—and a number of non-state plaintiffs including the Chesapeake Bay Foundation (''CBF'') and Anne Arundel County (''Plaintiffs'') filed complaints in the U.S. District Court for the District of Columbia. The Plaintiffs asserted that EPA has a mandatory duty under the Clean Water Act (''CWA'') to ensure that the goals of the Chesapeake Bay Agreement are met, and that EPA failed to perform that duty. Plaintiffs also asserted that EPA's evaluation of Pennsylvania's 2019 plan for implementing the Chesapeake Bay TMDL was arbitrary and capricious in violation of the Administrative Procedure Act (''APA''). EPA seeks public input on a proposed settlement agreement prior to its final decision-making with regard to potential settlement of the litigation.

DATES: Written comments on the proposed settlement agreement must be received by May 22, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0243 online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the ''Additional Information About Commenting on the Proposed Settlement Agreement'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alec Mullee, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency telephone: (202) 564–9616; email address: *mullee.alec@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

The Chesapeake Bay Program (CBP) partnership collaborates to restore the water quality of the Chesapeake Bay, primarily through a series of Chesapeake Bay Agreements. The CBP partnership includes the states in the Chesapeake Bay watershed—Delaware, Maryland, Pennsylvania, New York, Virginia, West Virginia, and the District of Columbia—the Federal government led by EPA, and numerous other stakeholders. The CBP partnership agreed upon a goal of having all practices and controls installed by 2025 to achieve the Bay's dissolved oxygen, water clarity/submerged aquatic vegetation and chlorophyll-a water quality standards (2025 Goal). The 2025 Goal is reflected in the latest Chesapeake Bay Agreement. In 2010, in collaboration with the Bay states, EPA established a Total Maximum Daily Load (TMDL) for the entire Chesapeake Bay watershed for nitrogen, phosphorus and sediment to address the aquatic life use impairments of tidal Bay waters and tidal tributaries. In 2019, the Bay states submitted their latest plans for implementing the Bay TMDL to EPA for evaluation. EPA's evaluation of Pennsylvania's plan concluded that, while the state plan would meet its numeric planning target for phosphorus, it would not meet its target for nitrogen by 2025. In 2022, Pennsylvania submitted an amended plan to EPA for evaluation, which EPA found still did not meet the state's nutrient goals.

On September 10, 2020, the Plaintiffs filed complaints, later consolidated, against EPA in the U.S. District Court for the District of Columbia. The parties have negotiated this proposed settlement agreement. EPA would agree in the proposed settlement agreement to take a number of steps regarding EPA oversight and funding of Pennsylvania's efforts under its CWA programs to reduce nutrient and sediment discharges within Pennsylvania's portion of the Bay watershed. EPA would also agree to evaluate by the end of 2026 how each Bay state fared in meeting the 2025 Goal.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed settlement agreement from persons who are not parties to the litigation. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Clean Water Act or Administrative Procedure Act.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the proposed settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2023–0243) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed settlement agreement and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

B. How and to whom do I submit comments?

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2023–0243 via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. We strongly encourage you to send your comments electronically to ensure that they are received prior to the close of the comment period. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA does not plan to consider these late comments.

Steven Neugeboren,

Associate General Counsel.

[FR Doc. 2023–08510 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10911–01–OA]

Small Community Advisory Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), EPA herby provides notice of a meeting for the Local Government Advisory Committee's (LGAC) Small Community Advisory Subcommittee (SCAS) on the date and time described below. This meeting will be open to the public. For information on public attendance and participation, please see the registration information under **SUPPLEMENTARY INFORMATION**.

DATES: The SCAS will meet virtually May 5th, 2023, from 12 p.m. through 1:15 p.m. Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Edlynzia Barnes, Designated Federal Officer (DFO), at *Barnes.edlynzia@epa.gov* or 773–638–9158.

Information on Accessibility: For information on access or services for individuals requiring accessibility accommodations, please contact Edlynzia Barnes by email at *Barnes.edlynzia@epa.gov.* To request accommodation, please do so five (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION: The SCAS will discuss the PFAS National Drinking Water Proposal Standard and PFAS Risk Communication. An agenda will be posted online (link below) prior to the meeting.

Registration: The meeting will be held virtually through an online audio and video platform. Members of the public who wish to participate should register by contacting the Designated Federal Officer (DFO) at *Barnes.edlynzia@epa.gov* by April 28, 2023. The agenda and other supportive meeting materials will be available online at *https://www.epa.gov/ocir/small-community-advisory-subcommittee-scas* and will be emailed to all registered. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

Edlynzia Barnes,

Designated Federal Officer, U.S. Environmental Protection Agency.

[FR Doc. 2023–08480 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10852–01–R6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption Reissuance—Class I Hazardous Waste Injection; Lyondell Channelview Plant, Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a no migration petition reissuance.

SUMMARY: Notice is hereby given that a reissuance of an exemption to the land disposal restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to Lyondell Chemical Company for three Class I hazardous waste injection wells at the Lyondell Channelview Plant located in Channelview, Texas.

DATES: This action was effective as of December 13, 2022.

ADDRESSES: Copies of the petition reissuance and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency (EPA), Region 6, Water Division, Safe Drinking Water Branch (6WD–D), 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102.

FOR FURTHER INFORMATION CONTACT: Ian Ussery, Physical Scientist, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–6639.

SUPPLEMENTARY INFORMATION: As required by 40 CFR part 148, Lyondell has adequately demonstrated to the satisfaction of the EPA by the petition reissuance application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by the Lyondell Channelview Plant, of the specific restricted hazardous wastes identified in this exemption reissuance, into Class I hazardous waste injection Wells WDW–148, WDW–162, and WDW–438 when it is drilled in the future, until December 31, 2050, unless EPA moves to terminate this exemption under provisions of 40 CFR 148.24. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. As required by 40 CFR 148.22(b) and 124.10, a public notice was issued September 13, 2022. The public comment period closed on October 28, 2022. No comments were received. This decision constitutes final Agency action, and there is no Administrative appeal.

Dated: April 17, 2023.

Charles W. Maguire,

Director, Water Division, Region 6.

[FR Doc. 2023–08443 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2021–0869; FRL–10916–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Chromium Finishing Industry Data Collection (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Chrome Finishing Industry Data Collection (EPA ICR Number 2723.01, OMB Control Number 2040–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** on November 16, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before May 22, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2021–0869, to EPA online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Dr. Phillip Flanders, Engineering and Analysis Division, Office of Science and Technology, 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–8323; email address: *Flanders.Phillip@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. 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.

Public comments were previously requested via the **Federal Register** on November 16, 2022 during a 60-day comment period (87 FR 68689). This notice allows for an additional 30 days for public comments. Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: As mentioned in Effluent Guidelines Program Plan 15, published in January 2023, EPA plans to conduct a rulemaking to address Per- and Polyfluoroalkyl Substances (PFAS) discharges from a subset of facilities in the Metal Finishing and Electroplating point source categories. Specifically, facilities performing certain chromium operations that employ hexavalent chromium (hereafter referred to as ''chrome finishing facilities''), including chromium plating, chromium anodizing, chromic acid etching, and chromate conversion coating that use or have used PFAS to control hexavalent chromium emissions. These facilities are expected to be the predominant sources of PFAS discharges in the Metal Finishing and Electroplating point source categories. Publicly available data on such facilities, including whether they perform chrome finishing operations and use and discharge of PFAS at the national scale, are limited. EPA reviewed the 2017 National Emissions Inventory (NEI), Compliance and Emissions Data Reporting Interface (CEDRI), Environmental Compliance History Online (ECHO), and Integrated Compliance Information System (ICIS), as well as data collected by several state environmental agencies. However, none of these data sources provide a complete population of chromium finishing facilities in the United States nor do they provide the detailed information on specific facility operations (including use of hexavalent chromium or PFAS), generation and management of wastewater, or wastewater characteristics necessary for the complex technical and economic analyses required for the review and development of ELGs. Therefore, this questionnaire and wastewater sampling program are necessary for EPA to determine if the current regulations remain appropriate and to develop new regulations if they are deemed to be warranted. EPA has identified and compiled mailing addresses for approximately 2,035 potential chromium finishing facilities in the United States. All active metal finishing and electroplating facilities that conduct or have conducted one or more of the specified chromium finishing operations will be required to complete the questionnaire.

Form numbers: 6100–079.

Respondents/affected entities: All chrome finishing facilities in the U.S. will receive the questionnaire and no

more than 20 facilities will be asked to conduct specific wastewater sampling.

Respondent's obligation to respond: Mandatory (Clean Water Act section 308).

Estimated number of respondents: 2,035 (total).

Frequency of response: One-time data collection.

Total estimated burden: 15,406 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,202,613 (per year), which includes $4,805 annualized capital or operation & maintenance costs.

Changes in the estimates: This is a new data collection request.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–08440 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0100; FRL–10740–01–OCSPP]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Environmental Protection Agency's (EPA's) Office of Pesticide Programs is announcing a virtual public meeting of the Pesticide Program Dialogue Committee (PPDC) on May 31 and June 1, 2023, with participation by webcast only. There will be no in-person gathering for this meeting.

DATES: *Virtual meeting:* May 31, 2023, and June 1, 2023. On or before May 23, 2023, you must register to attend the virtual meeting and request special accommodations, as well as request an opportunity to present oral comments at the virtual meeting.

ADDRESSES:

Virtual meeting: You must register to receive the webcast meeting link for this virtual meeting by following the instructions on the EPA website at *https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc.*

Special accommodations: For information on access or services for individuals with disabilities, and to request accommodation for a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. To allow EPA time to process the request for special accommodations, requests should be submitted on or before May 23, 2023.

FOR FURTHER INFORMATION CONTACT: Michelle Arling, Office of Pesticide Programs (7501M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW (7101M), Washington, DC 20460; telephone number: (202) 566–1260; email address: *arling.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you work in in agricultural settings or if you are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*); the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*); the Pesticide Registration Improvement Act (PRIA) (which amends FIFRA section 33); and the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; state, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified under docket identification (ID) number EPA–HQ–OPP–2023–0100, is available online at *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Background

The PPDC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the PPDC in September 1995 to provide policy advice, information and recommendations to the EPA Administrator through the Director of the Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention. The PPDC provides a public forum to discuss a wide variety of pesticide regulatory developments and reform initiatives, evolving public policy and program implementation issues associated with evaluating and reducing risks from the use of pesticides.

III. How do I participate in the virtual public meeting?

A. Virtual Meeting

The virtual meeting will be conducted via webcast. Please visit *https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc* to find a link to register for the meeting. Instructions for joining the meeting will be sent via email to those that register for the meeting.

B. Oral Comments

Requests to make brief oral comments to the PPDC during the virtual meeting should be submitted to the individual listed under **FOR FURTHER INFORMATION CONTACT** on or before noon on the date set in the **DATES** section.

Authority: 5 U.S.C. appendix 2 *et seq.* and 7 U.S.C. 136 *et seq.*

Dated: April 17, 2023.

Edward Messina,

Director, Office of Pesticide Programs.

[FR Doc. 2023–08445 Filed 4–20–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 88 FR 21190.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, April 18, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on April 19, 2023.

CHANGES IN THE MEETING: The meeting also discussed:

Matters relating to internal personnel decisions, or internal rules and practices.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2023–08530 Filed 4–19–23; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS23–03]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Special Meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) met for a Special Meeting on this date.

Location: Virtual meeting via Webex.
Date: April 12, 2023.
Time: 12:15 p.m. ET.

Action and Discussion Item

Fiscal Year 2023 Budget Amendment

The ASC convened a Special Meeting to vote on a budget amendment in the amount of $267,065 to the ASC's Fiscal Year 2023 budget. The vote passed 6–0 with the FDIC abstaining.

James R. Park,

Executive Director.

[FR Doc. 2023–08507 Filed 4–20–23; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL TRADE COMMISSION

[File No. 232 3007]

Cycra Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 22, 2023.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Cycra Inc.; File No. 232 3007'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex P), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Julia Solomon Ensor (202–326–2377), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 22, 2023. Write ''Cycra Inc.; File No. 232 3007'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website. If you prefer to file your comment on paper, write ''Cycra Inc.; File No. 232 3007'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex P), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before May 22, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (the ''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Cycra Inc. and

Steven Chadwick James (''Respondents''). The proposed consent order has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received and decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves Respondents' labeling and advertising of motorcycle, motocross, and all-terrain vehicle products as ''Made in USA.'' According to the FTC's complaint, Respondents labeled and advertised their products as made in the United States even though, in numerous instances, those products were wholly imported or contained significant imported content. Based on the foregoing, the complaint alleges Respondents violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a), and section 323.2 of the Made in USA Labeling Rule, 16 CFR 323.2.

The proposed consent order contains provisions designed to prevent Respondents from engaging in similar acts and practices in the future. Consistent with the FTC's Made in USA Labeling Rule, 16 CFR part 323, and its Enforcement Policy Statement on U.S.-Origin Claims, Part I prohibits Respondents from making U.S.-origin claims for their products unless: (1) the final assembly or processing of the product occurs in the United States, all significant processing that goes into the product occurs in the United States, and all or virtually all ingredients or components of the product are made and sourced in the United States; (2) a clear and conspicuous qualification appears immediately adjacent to the representation that accurately conveys the extent to which the product contains foreign parts, ingredients or components, and/or processing; or (3) for a claim that a product is assembled in the United States, the product is last substantially transformed in the United States, the product's principal assembly takes place in the United States, and United States assembly operations are substantial. Part II prohibits Respondents from making any representation about the country of origin of a product or service, unless the representation is not misleading and Respondents have a reasonable basis substantiating it.

Parts III through V are monetary provisions. Part IV imposes a judgment of $872,577 and partially suspends that judgment based on the Respondents' sworn financial statements. If the Commission concludes any Respondent made a material misrepresentation or omission in that Respondent's sworn financial statement, the suspension as to that Respondent is lifted and the full judgment is immediately due. Part IV includes additional monetary provisions relating to collections. Part V requires Respondents to provide sufficient customer information to enable the Commission to administer consumer redress, if appropriate.

Part VI is a notice provision requiring Respondents to identify and notify certain consumers of the FTC's action within 30 days after the issuance of the order, or within 30 days of the consumer's identification, if identified later. Respondents are also required to submit reports regarding their notification program.

Parts VII through VIII are reporting and compliance provisions. Part VII requires Respondents to acknowledge receipt of the order, to provide a copy of the order to certain current and future principals, officers, directors, and employees, and to obtain an acknowledgement from each such person that they have received a copy of the order. Part VIII requires Respondents to file a compliance report within one year after the order becomes final and to notify the Commission within 14 days of certain changes that would affect compliance with the order. Part IX requires Respondents to maintain certain records, including records necessary to demonstrate compliance with the order. Part X requires Respondents to submit additional compliance reports when requested by the Commission and to permit the Commission or its representatives to interview Respondents' personnel.

Finally, Part XI is a ''sunset'' provision, terminating the order after 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the Proposed Order. It is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify in any way the Proposed Order's terms.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2023–08471 Filed 4–20–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10302]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, 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.

DATES: Comments must be received by June 20, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10302 Collection Requirements for Compendia for Determination of Medically-accepted Indications for Off-label Uses of Drugs and Biologicals in an Anti-cancer Chemotherapeutic Regimen

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection Requirements for Compendia for Determination of Medically-accepted Indications for Off-label Uses of Drugs and Biologicals in an Anti-cancer Chemotherapeutic Regimen; *Use:* Section 182(b) of the Medicare Improvement of Patients and Providers Act (MIPPA) amended section 1861(t)(2)(B) of the Social Security Act (42 U.S.C. 1395x(t)(2)(B)) by adding at the end the following new sentence: 'On and after January 1, 2010, no compendia may be included on the list of compendia under this subparagraph unless the compendia has a publicly transparent process for evaluating therapies and for identifying potential conflicts of interest.' We believe that the implementation of this statutory provision that compendia have a ''publicly transparent process for evaluating therapies and for identifying potential conflicts of interests'' is best accomplished by amending 42 CFR 414.930 to include the MIPPA requirements and by defining the key components of publicly transparent processes for evaluating therapies and for identifying potential conflicts of interests.

All currently listed compendia will be required to comply with these provisions, as of January 1, 2010, to remain on the list of recognized compendia. In addition, any compendium that is the subject of a future request for inclusion on the list of recognized compendia will be required to comply with these provisions. No compendium can be on the list if it does not fully meet the standard described in section 1861(t)(2)(B) of the Act, as revised by section 182(b) of the MIPPA. *Form Number:* CMS–10302 (OMB control number: 0938–1078); *Frequency:* Annually; *Affected Public:* Business and other for-profits and Not-for-profit institutions; *Number of Respondents:* 845; *Total Annual Responses:* 900; *Total Annual Hours:* 5,135. (For policy questions regarding this collection contact Sarah Fulton at 410–786–2749.)

Dated: April 17, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–08401 Filed 4–20–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias (ADRD) on people with the disease and their caregivers. During the meeting on May 8, 2023, the Advisory Council will hear presentations about the drug approval and coverage decision processes. A panel will also present on progress and challenges in translating research into clinical impact. Federal agencies will provide updates on activities during the last quarter.

DATES: The meeting will be held on May 8th from 9:30 p.m. to 4:30 p.m. EST.

ADDRESSES: The meeting will be a hybrid of in-person and virtual. The meeting will be held in Room 305A of the Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. It will also stream live at *www.hhs.gov/live.*

Comments: Time is allocated on the agenda to hear public comments from 4:00 p.m. to 4:30 p.m. The time for oral comments will be limited to two (2) minutes per individual. In order to provide a public comment, please register by emailing your name to *napa@hhs.gov* by Thursday, May 4th. Registered commenters will receive both a dial-in number and a link to join the meeting virtually; individuals will have the choice to either join virtually via the link, or to call in only by using the dial-in number. *Note:* There may be a 30–45 second delay in the livestream video presentation of the conference. For this reason, if you have pre-registered to submit a public comment, it is important to connect to the meeting by 3:45 p.m. to ensure that you do not miss your name and allotted time when called. You will not be admitted into the meeting before 3:45 p.m. If you miss your name and allotted time to speak, you may not be able to make your public comment. Should you have questions during the session email *napa@hhs.gov* and someone will respond to your message as quickly as possible.

In order to ensure accuracy, please submit a written copy of oral comments for the record by emailing *napa@hhs.gov* by Tuesday, May 9, 2023. These comments will be shared on the website and reflected in the meeting minutes.

In lieu of oral comments, formal written comments may be submitted for the record by Tuesday, May 9, 2023 to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW, Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, 202–260–6075, *helen.lamont@hhs.gov.* Note: The meeting will be available to the public live at *www.hhs.gov/live.* Note: Seating

is very limited and will be limited to 10 members of the public. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''May 8 Meeting Attendance'' in the subject line so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. app. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: clinical care, dementia risk reduction, social determinants of health.

Procedure and Agenda: The meeting will be webcast at *www.hhs.gov/live* and video recordings will be added to the National Alzheimer's Project Act website when available, after the meeting.

Authority: 42 U.S.C. 11225; section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: April 6, 2023.

Miranda Lynch-Smith,

Senior Official Performing the Duties of the Assistant Secretary for Planning and Evaluation Deputy Assistant Secretary for Human Services Policy.

[FR Doc. 2023–08469 Filed 4–20–23; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0001]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before June 20, 2023.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 264–0041 and *PRA@HHS.GOV.*

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–0001–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov, PRA@HHS.GOV* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Application for waiver of the two-year foreign residence requirement of the Exchange Visitor Program.

Type of Collection: Reinstatement without change.

OMB No.: 0990–0001.

Abstract: The Department of Health and Human Services, Office of Global Health Affairs program deals with both research and clinical care waivers. Applicant institutions apply to this Department to request a waiver on behalf of research scientists or foreign medical graduates to work as clinicians in HHS designated health shortage areas doing primary care in medical facilities. The instructions request a copy of Form G–28 from applicant institutions represented by legal counsel outside of the applying institution. United States Department of Justice Form G–28 ascertains that legal counsel represents both the applicant organization and the exchange visitor.

Need and Proposed Use of the Information: Required as part of the application process to collect basic information such as name, address, family status, sponsor and current visa information.

Likely Respondents: Research scientists and research facilities.

ANNUALIZED BURDEN HOUR TABLE

Forms (if necessary)	Respondents (If necessary)	Number of respondents	Number of responses per respondents	Average burden per response (hours)	Total burden hours
Application Waiver/Supplemental A Research	HHS 426	45	1	10	450
Application Waiver/Supplemental B Clinical Care	HHS 426	35	1	10	350
Total					800

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–08404 Filed 4–20–23; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Instrumentation and Systems Development.

Date: April 27, 2023.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 17, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08435 Filed 4–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Centers of Biomedical Research Excellence COBRE (P20) Applications.

Date: July 17, 2023.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Manas Chattopadhyay, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12N, Bethesda, Maryland 20892, 301–827–5320, *manasc@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nigms.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 17, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08405 Filed 4–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Mechanisms Underlying Heterogeneity of Cognitive Outcomes in Synucleinopathy.

Date: June 15, 2023.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joshua Jin-Hyouk Park, Ph.D., Scientific Review Officer, National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–6208, *joshua.park4@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 17, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08407 Filed 4–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Secondary Analyses of Existing Datasets of Tobacco Use and Health.

Date: May 17, 2023.

Time: 12:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ola Mae Zack Howard, Ph.D., BS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; USU Military Women's Health Research Program.

Date: May 19, 2023.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Taduru Sreenath, Scientific Review Officer Detailee, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–435–1199, *taduru.sreenath@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 17, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08434 Filed 4–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory General Medical Sciences Council, May 18, 2023, 09:30 a.m. to May 18, 2023, 04:30 p.m., National Institutes of health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 23, 2023, FR Doc 2023–05968, 88 FR 17588.

The link to the ''contact us form'' was inadvertently not published. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should submit a request at least 5 days prior to the meeting using the following link: *https://www.nigms.nih.gov/Pages/ContactUs.aspx.* The meeting is partially Closed to the public.

Dated: April 17, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–08408 Filed 4–20–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Solicitation of Nominations for Organizations To Serve as Non-Voting Liaison Representatives to the Advisory Committee on Women's Services (ACWS) Subcommittee on Maternal Mental Health; Second Notice

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) within the Department of Health and Human Services (HHS), is soliciting nominations from qualified organizations to be considered for non-voting liaison representative positions on a subcommittee of the Advisory Committee for Women's Services (ACWS) focused on maternal mental health.

DATES: Nomination period is open until May 31, 2023.

ADDRESSES: All nominations should be sent to Valerie Kolick, Designated Federal Officer, Advisory Committee on Women's Services, SAMHSA, 18th Floor, 5600 Fishers Ln., Rockville, MD 20857. Nomination materials, including attachments, may be submitted electronically to *valerie.kolick@samhsa.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Valerie Kolick, Designated Federal Officer, Advisory Committee on Women's Services, SAMHSA, 5600 Fishers Ln., Rockville, MD 20857. Telephone number (240) 276–1738. Inquiries can be sent to *valerie.kolick@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: The ACWS subcommittee will consist of 5 non-voting liaison representatives who are nominated by their organizations to serve as the representatives of their organizations and selected by the ACWS DFO. The ACWS's role is to advise the Associate Administrator for Women's Services (AAWS) on appropriate activities to be undertaken by the agencies of the Administration with respect to women's substance use and mental health services, including services which require a multidisciplinary approach. These may include discussion on the development of policies and programs regarding women's issues; plans to standardize and enhance the collection of data on women's health, and other emerging issues concerning women's substance use and mental health services. In particular, this subcommittee will focus on maternal mental health issues (which includes substance use) including prevention, screening, diagnosis, treatment, equity and community-based interventions. These five non-voting liaison representative positions will be occupied by individuals who are nominated by their organizations to serve as representatives of organizations concerned with maternal mental health. Organizations will be designated to occupy the positions for a two-year term to commence during the 2023 calendar year. Nominations of qualified organizations are being sought for these five non-voting liaison representative positions. The organizations chosen for representation on ACWS subcommittee will be selected by the Designated Federal Officer (DFO) or designee during the 2023 calendar year. Details of nomination requirements are provided below.

The purpose of the ACWS is to advise the Associate Administrator for Women's Services (AAWS) on appropriate activities to be undertaken by the agencies of the Administration with respect to women's substance abuse and mental health services, including services which require a multidisciplinary approach. These may include discussion on the development of policies and programs regarding women's issues; plans to standardize and enhance the collection of data on women's health, and other emerging issues concerning women's substance abuse and mental health services.

Management and support services for Committee activities are provided by staff from the HHS SAMHSA. The ACWS charter is available at *https://www.samhsa.gov/about-us/advisory-councils/acws/committee-charter.* ACWS meetings are held not less than two times per fiscal year. The ACWS shall consist of not more than ten (10) members to be appointed by the Assistant Secretary for Mental Health and Substance Use, a majority of whom shall be women, who are not officers or employees of the Federal Government. Members shall be from among physicians, practitioners, treatment providers, and other health professionals, whose clinical practice, specialization, or professional expertise includes a significant focus on women's substance use and mental health conditions.

Subcommittees of the ACWS may be established with the approval of the Assistant Secretary or the AAWS. The advice/recommendations of a subcommittee must be deliberated by the parent committee. A subcommittee may not provide advice or work products directly to the agency. The Department Committee Management Officer will be notified upon the establishment of each subcommittee and will be provided information on its name, membership, function, and estimated frequency of meetings.

Nominations

SAMHSA is requesting nominations of organizations to fill five non-voting liaison representative positions for the ACWS Subcommittee on maternal mental health. The organizations for representation will be selected by the

DFO or designee during the 2023 calendar year.

Selection of organizations that will serve as non-voting liaison representatives will be based on the organization's qualifications to contribute to the accomplishment of the ACWS mission, as described in the Committee charter. In selecting organizations to be considered for these positions, SAMHSA will give close attention to equitable geographic distribution and give priority to U.S.-chartered 501(c)(3) organizations that operate within the United States and have membership with demonstrated expertise in maternal mental health and related research, clinical services, or advocacy and outreach on issues concerning maternal mental health.

Organizations that currently have non-voting liaison representatives serving on ACWS are also eligible for nomination or to nominate themselves for consideration.

The individual designated by the selected organization to serve as the official liaison representative will perform the associated duties without compensation, and will not receive per diem or reimbursement for travel expenses. The organizations that are selected will cover expenses for their designated representative to attend, at a minimum, one in-person ACWS meeting per year during the designated term of appointment.

To qualify for consideration of selection to the Committee, an organization should submit the following items:

(1) A statement of the organization's history, mission, and focus, including information that demonstrates the organization's experience and expertise in maternal mental health and related research, clinical services, or advocacy and outreach on issues of maternal mental health, as well as expert knowledge of the broad issues and topics pertinent to maternal mental health. This information should demonstrate the organization's proven ability to work and communicate with the maternal mental health patient and advocacy community, and other public/private organizations concerned with maternal mental health, including public health agencies at the Federal, State, and local levels.

(2) Two to four letters of recommendation that clearly state why the organization is qualified to serve on the ACWS subcommittee on maternal mental health in a non-voting liaison representative position. These letters should be from individuals who are not part of the organization.

(3) A statement that the organization is willing to serve as a non-voting liaison representative of the Sub-Committee and will cover expenses for their representative to attend in-person, at a minimum, one ACWS meeting per year in Rockville, MD during the designated term of appointment.

(4) A current financial disclosure statement (or annual report) demonstrating the organization's ability to cover expenses for its selected representative to attend, at a minimum, one ACWS subcommittee meeting per year in Rockville, MD, during the term of appointment.

Submitted nominations must include these critical elements in order for the organization to be considered for one of the liaison representative positions.

Nomination materials should be typewritten, using a 12-point font and double-spaced. Nominations are being accepted on a rolling deadline until positions are filled.

Electronic submissions: Nomination materials, including attachments, may be submitted electronically to *valerie.kolick@samhsa.hhs.gov.* Telephone and facsimile submissions cannot be accepted.

Regular, Express or Overnight Mail: Written documents may be submitted to the following addressee only: Valerie Kolick, Designated Federal Officer, ACWS, SAMHSA, 18th Floor, Office of Intergovernmental and Public Affairs, 5600 Fishers Ln., Rockville, MD 20857.

HHS makes every effort to ensure that the membership of Federal advisory committees is fairly balanced in terms of points of view represented. Every effort is made to ensure that a broad representation of geographic areas, sex, ethnic and minority groups, and people with disabilities are given consideration for membership on Federal advisory committees. Selection of the represented organizations shall be made without discrimination against the composition of an organization's membership on the basis of age, sex, race, ethnicity, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Authority: The Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) is required by 42 U.S.C. 290aa; section 501(f)(2)(C) of the Public Health Service Act, as amended. The ACWS is governed by the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. ch. 10.

Dated: April 18, 2023.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2023–08466 Filed 4–20–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2023–0006]

Public Meeting: Green Trade Innovation and Incentives Forum

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice of public meeting; request for presentation proposals and public comments.

SUMMARY: U.S. Customs and Border Protection (CBP) will host a public Green Trade Innovation and Incentives Forum and invites interested parties to participate. CBP is announcing this public meeting to solicit and share ideas related to green trade innovation and incentivization of clean and sustainable supply chains and trade decarbonization. To that end, CBP is collecting public comments in response to this notice to be shared and discussed during the forum, focusing on the following themes: green data as a strategic asset; green trade incentives; and green trade-related research and innovation. CBP is also soliciting proposals from industry volunteers to participate in a Trade Sustainability Leadership Showcase that will be held during the event. This notice provides information on CBP's goals for this public meeting, its commitment to environmental stewardship, and its Green Trade Strategy.

DATES:

Meeting: The Green Trade Innovation and Incentives Forum will be held on Tuesday, July 11, 2023, from 9 a.m. to 5 p.m. EDT.

Pre-registration: Members of the public wishing to attend the meeting, whether in-person or via videoconference, must pre-register as indicated in the **ADDRESSES** section by 5 p.m. EDT, Tuesday, June 20, 2023.

Cancellation of pre-registration: Members of the public who are pre-registered to attend and later need to cancel should do so by 5 p.m. EDT, Tuesday, June 27, 2023. Participants who wish to cancel their pre-registration should email *GreenTradeForum2023@cbp.dhs.gov* to notify CBP of their cancellation.

Showcase presentation proposals: Members of the public who wish to participate in the Trade Sustainability Leadership Showcase must submit a proposal as indicated in the **ADDRESSES** section by 5 p.m. EDT, Monday, May 22, 2023. CBP expects to notify those individuals selected to participate in the Showcase of their selection by Tuesday, June 13, 2023. Showcase participants are expected to attend in-person.

Submission of comments: Members of the public wishing to submit comments in response to the Green Trade Themes, as described in the **SUPPLEMENTARY INFORMATION** section, must do so by 5 p.m. EDT, Monday, May 22, 2023, by using one of the methods described in the **ADDRESSES** section. CBP expects to notify those individuals selected to offer comments during the meeting of their selection by Tuesday, June 20, 2023.

ADDRESSES:

Meeting: The Green Trade Innovation and Incentives Forum will be conducted in-person and via videoconference. The in-person meeting will be held at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia 22314. A link to participate via videoconference will be provided to those individuals who pre-register for the virtual attendance option. For information on services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Lea-Ann Bigelow, Office of Trade, U.S. Customs and Border Protection, at *GreenTradeForum2023@cbp.dhs.gov* as soon as possible.

Pre-registration: Meeting participants may attend either in-person or via videoconference after pre-registering using one of the methods indicated below; on-site registration is not permitted.

For members of the public who plan to attend the meeting in-person, please pre-register online at *https://sri-csl.regfox.com/greentradeforum-inperson.*

For members of the public who plan to participate via videoconference, please pre-register online at *https://sri-csl.regfox.com/greentradeforum-virtual.*

Trade Sustainability Leadership Showcase Presentation Proposals: Industry members who wish to be considered for participation in the Trade Sustainability Leadership Showcase should send a presentation proposal no more than five hundred (500) words in length to *GreenTradeForum2023@cbp.dhs.gov.* The proposal should include your name and the name of your organization, a working title for your presentation, and your organization's role in the international trade industry. Please see the **SUPPLEMENTARY INFORMATION** section for more information about additional required contents of the proposal.

Submission of Comments: To facilitate public participation, we are inviting public comment on the three Green Trade Themes described below. In addition to submitting written comments to the docket, participants in the in-person and virtual components of the forum may also be selected for the opportunity to offer a public statement during the meeting. These oral comments are encouraged to stimulate discussion and knowledge sharing among the forum's participants. Please see the **SUPPLEMENTARY INFORMATION** section for more information on the comment themes and submission of written or oral comments. All comments—whether intended solely for the written docket or for oral presentation during the forum—must be submitted in writing according to the following instructions:

Instructions for Submission of Oral Comments: For those who wish to give a public statement in-person or virtually during the meeting, please send your comments to *GreenTradeForum2023@cbp.dhs.gov,* include the docket number USCBP–2023–0006 in the subject line of the message, indicate your interest in providing oral comment and provide the following information: first and last name; title/position; phone number; email address; name and type of organization; identify the theme to which you wish to speak (each individual will be limited to one public statement on one theme); and provide your comment. CBP will then post your comment on the docket without the personal information. If you wish to give a public statement in-person or virtually during the meeting, please do not send your comments through the Federal eRulemaking Portal, as the identification information is required for CBP to contact you, and all comments sent to the portal will be posted without change. Please do not submit personal information to the Federal eRulemaking portal.

Instructions for Submission of Written-Only Comments: All comments submitted to the docket must include the words ''Department of Homeland Security'' and the docket number for this action: USCBP–2023–0006. Comments may be submitted by *one* (1) of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: GreenTradeForum2023@cbp.dhs.gov.* Include the docket number USCBP–2023–0006 in the subject line of the message. CBP will post comments received by email on the docket without change.

Docket: For access to the docket or to read background documents or comments, go to the Federal eRulemaking Portal—*http://www.regulations.gov*—and search for Docket Number USCBP–2023–0006. To submit a comment, click the ''Comment'' button located on the top-left hand side of the docket page.

FOR FURTHER INFORMATION CONTACT: Ms. Lea-Ann Bigelow, Office of Trade, U.S. Customs and Border Protection, at (202) 863–6000 or at *GreenTradeForum2023@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

CBP Green Trade Strategy Overview

In executing its trade mission, U.S. Customs and Border Protection (CBP) is charged with facilitating legitimate cross-border trade while enforcing U.S. trade laws and keeping the American public safe. This mission has long encompassed the protection of natural resources and prevention of environmental degradation. Climate change and other environmental challenges are critical considerations for CBP, as it carries out its mission of protecting the American people, safeguarding U.S. borders, and enhancing the nation's economic prosperity. While climate change and other environmental considerations pose significant challenges for CBP's trade mission and the trade participants CBP serves, they also provide new opportunities for innovation and improvement in trade processes, technology and standards, as well as opportunities for enhanced partnerships, collaboration, and knowledge sharing. The United States is pursuing a whole-of-government approach to addressing climate change as articulated in Executive Order 14008 (Jan. 27, 2021).

In recognition of these challenges and opportunities, and its commitment to building a more sustainable future for trade, CBP announced the launch of the CBP Green Trade Strategy at the World Customs Organization (WCO) in Brussels in June 2022. The Green Trade Strategy establishes CBP's vision to build resilience and address environmental and climate-related threats, while capitalizing on opportunities to grow the economy and accelerate innovation in a sustainable way. The Green Trade Strategy aligns with broader Department of Homeland Security (DHS) efforts (such as the DHS Climate Action Plan, which can be found at *www.dhs.gov/dhs-actions-*

climate-change) and supports a whole-of-government approach to mitigating risk and seizing opportunities associated with climate change and environmental stewardship. The Green Trade Strategy aims to incentivize green trade, accelerate green innovation, strengthen CBP's environmental enforcement posture, and improve the agency's climate resilience and resource efficiency.

Details of the Strategy can be found at *https://www.cbp.gov/trade/cbp-green-trade-strategy.* Through the Green Trade Strategy, CBP will establish itself as a champion for the green economy and facilitate the global transition to a cleaner, more climate-resilient trading environment. CBP intends to exemplify higher, greener standards for global trade while creating an opportunity for government, industry, and the public to unify efforts in the creation of a more sustainable future.

As we progress further into the 21st century, there is widespread recognition of the challenges that climate change is creating and will continue to create for the international trade community. Recent studies have indicated that global supply chains contribute a significant amount to the world's total carbon emissions. Resource extraction and cultivation methods, production and storage requirements, the movement of persons and materials, and the transportation of goods represent various points in the supply chain that may generate emissions. Each stage in the supply chain also represents an opportunity for greener, more sustainable practices.

CBP is well positioned to make a positive difference on the path to a cleaner, environmentally-resilient future due to the agency's ability to influence global supply chain practices as well as its ability to enforce against natural resource crimes, but it cannot meet this challenge alone. Greening global supply chains and combatting the negative impacts of climate change and environmental degradation will necessitate innovative partnerships between public and private organizations with a stake in building a more sustainable future for trade.

Agenda

Green Trade Innovation and Incentives Forum

9 a.m.–12 p.m.—Opening Remarks, Keynote Presentations and Trade Sustainability Leadership Showcase

1 p.m.–5 p.m.—Public Statements and Open Public Comment on Green Trade Themes

Trade Sustainability Leadership Showcase

To highlight the various ways that industry organizations within the international trade community are currently leading in their efforts to reduce greenhouse gas emissions, conserve natural resources, and increase overall environmental sustainability within their operations, CBP will be hosting a Trade Sustainability Leadership Showcase during the Green Trade Innovation and Incentives Forum. The Showcase will present an opportunity and platform for selected members of the international trade community to share their successes, best practices, challenges and lessons learned in greening their own operational processes and footprints, as well as discuss the ways they are working with supply chain and other business partners to reduce emissions, protect natural resources, and generate innovative solutions. While the Showcase cannot represent all experiences and perspectives, it is CBP's hope that the sustainability journeys of those organizations featured will inspire further creative thinking, knowledge sharing, and problem solving across the international trade community.

Members of the public who wish to participate in the Trade Sustainability Leadership Showcase should submit a proposal, following the instructions under the **ADDRESSES** section. The proposal should be no more than five hundred (500) words in length, include your name and the name of your organization, a working title for your presentation, and your organization's role in the international trade industry. The proposal should also provide a summary of how your organization is actively greening its footprint and increasing sustainability of its own supply chain and trade processes, including best practices and lessons learned. CBP will evaluate and select participants and their submissions based upon considerations such as industry experience, sustainability goals and practices, and ability to effectively share their knowledge alongside other panelists, as well as CBP's desire to feature a balanced range of industry perspectives. CBP will notify all individuals selected to participate of their selection by Tuesday, June 13, 2023.

Public Statements and Open Public Comment on Green Trade Themes

Furthermore, CBP invites members of the public to participate through oral and written comments on the themes below. The public may submit written comments to the docket, following the instructions in the **ADDRESSES** section. Members of the public who wish to provide a public statement should likewise follow the instructions under the **ADDRESSES** section. Due to time and content considerations, it is possible that not all persons who express an interest in making a public statement will be able to do so. Speakers will be selected based on time considerations and to ensure that diverse, individual perspectives are highlighted. CBP will select and contact individuals to deliver public statements starting no later than Tuesday, June 20, 2023. Members of the public may submit as many comments as they wish; however, any commenter who is selected to provide an oral public statement during the event will be limited to one statement on one theme, during one timeslot.

CBP has identified three key topics for international trade industry and public input: (1) Green Data as a Strategic Asset; (2) Green Trade Incentives; and (3) Green Trade Research and Innovation. Brief descriptions of each theme are provided in this document along with the request for public comments on questions posed by CBP related to each theme.

(1) Green Data as a Strategic Asset

CBP and industry efforts to reach climate resilience and sustainability goals are anchored on improving decision-making through risk management and greater supply chain visibility. These efforts include not only exploring how to better utilize big data and predictive analytics to drive decision-making, but also the identification of operations-related data and other enterprise, supply chain, and logistics data that can be applied to optimize business efficiency and—by extension—sustainability.

Public Comment Questions:

- What data have you found useful in greening your trade operations? To what data do you wish you had better access?
- What additional data could CBP potentially provide (in accordance with existing laws) that would most benefit your sustainable decision-making?
- What data or datasets would you like members of the international trade community to be aware of as they continue on their environmental sustainability journeys?

(2) Green Trade Incentives

CBP seeks to develop facilitation benefits and other incentives to promote environmentally-friendly trade practices and supply chains.

Public Comment Questions:

- What are some tangible benefits CBP could provide to trade entities to incentivize their transition to more sustainable trade practices?
- What are the key underlying principles that CBP should follow as we seek to harmonize global green standards?
- What are the major hurdles your organization faces now in pursuing greener practices?

(3) Green Trade Research and Innovation

CBP aims to promote the development and deployment of innovative, sustainable green trade practices and technology by public and private stakeholders to encourage environmentally conscious operations that are informed by cutting-edge research and are able to accommodate on-going changes in global trade.

Public Comment Questions:

- What current opportunities do you see for research and innovation in green trade? How is your organization currently advancing research into green trade topics and/or pursuing innovative technology solutions with the potential to increase the sustainability of global trade flows?
- What specific environmental stewardship and sustainability gaps or issues do you see in the international trade community that could be addressed through investment in emerging technologies, and what are those technologies?
- What challenges do you face in bringing green trade innovation and technology solutions to market or incorporating them on an industry-wide scale?

Dated: April 17, 2023.

AnnMarie R. Highsmith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2023–08394 Filed 4–20–23; 8:45 am]

BILLING CODE 9111–14–P

INTER-AMERICAN FOUNDATION

60-Day Notice for the "Candidate Survey"

AGENCY: Inter-American Foundation.

ACTION: Notice.

SUMMARY: The Inter-American Foundation (IAF), as part of its continuing efforts 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 ensure that requested data is 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 is properly assessed. Currently, the IAF is soliciting comments concerning the information collection of the candidate experience when applying to positions at the IAF. The purpose of this survey is to give candidates the opportunity to provide feedback on where they found the job posting and their experience in the application and interview process. This will inform the IAF on ways to improve the recruitment and hiring process.

DATES: Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**.

ADDRESSES: Send comments to Natalia Mandrus, Inter-American Foundation, via email to *nmandrus@iaf.gov,* and Nicole Stinson, Inter-American Foundation via email to *nstinson@iaf.gov.*

SUPPLEMENTARY INFORMATION: The IAF is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Can help the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Nicole Stinson,

Associate General Counsel.

[FR Doc. 2023–08499 Filed 4–20–23; 8:45 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CA_FRN_MO4500170079]

Notice of Public Meetings of the Central California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Central California Resource Advisory Council (RAC) will meet as follows.

DATES: The RAC will hold public meetings on June 14 and 15, 2023; Sept. 12 and 13, 2023; Nov. 14 and 15, 2023; and Feb. 27 and 28, 2024. Field Tours will be held on June 14, Sept. 12, Nov. 14, and Feb. 27 from 1 p.m. to 5 p.m. each day. In-person business meetings will be held on June 15, Sept. 13, Nov. 15, and Feb. 28, from 9 a.m. to 12 p.m. each day, and a virtual participation option will be available. Public comments will be accepted at 11:30 a.m. on each business meeting day.

If weather or circumstances arise that prohibit on-site meetings, the field tours will be cancelled, and the business meetings will be held in all-virtual formats via Zoom from 9 a.m. to 12 p.m. on Thursday, June 15; Wednesday, Sept. 13; Wednesday, Nov. 15; and Wednesday, Feb. 28. The meetings and field tours are open to the public.

ADDRESSES: Meeting links and participation instructions will be made available to the public via news media, social media, the RAC's web page at *https://go.usa.gov/xH9ya,* and through personal contact 2 weeks prior to the meeting. The June 14 field tour will be to the Merced River Recreation Management Area. The field tour will commence and conclude at the BLM Briceburg Visitor Center, 7555 State Route 140, Midpines, CA 95345. The June 15 meeting will also be held at the BLM Briceburg Visitor Center.

The Sept. 12 field tour will be to Case Mountain Extensive Recreation Management Area. The field tour will commence and conclude at the Three Rivers Veteran's Hall, 43490 Sierra Dr., Three Rivers, CA. The Sept. 13 meeting will be held at the BLM Bakersfield Field Office, 35126 McMurtrey Avenue, Bakersfield, CA 93308.

The Nov. 14 field tour will be to the Berryessa Snow Mountain National

Monument. The field tour will commence and conclude at the BLM Ukiah Field Office, 2550 North State Street, Suite 2, Ukiah, CA 95482. The Nov. 15 meeting will also be held at the BLM Ukiah Field Office.

The Feb. 27, 2024, field tour will be to the Cotoni-Coast unit of the California Coastal National Monument. The field tour will commence and conclude at Swanton Berry Farm, 25 Swanton Rd., Davenport, CA. The Feb. 28, 2024, meeting will be held at the BLM Central Coast Field Office, 940 2nd Avenue, Marina, CA 93933.

Written comments pertaining to any of the above meetings can be sent to the BLM Central California District Office, 5152 Hillsdale Circle, El Dorado Hills, CA 95762, Attention: RAC meeting comments.

FOR FURTHER INFORMATION CONTACT: Public Affairs Officer Philip Oviatt, email: *poviatt@blm.gov* or telephone: (661) 342–4252. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: Topics for the RAC meetings are as follows: On June 14, 2023, the RAC will tour the Merced River Recreation Management Area that may be affected by potential fee increases under consideration. On June 15, 2023, the RAC will be briefed on a business plan being developed with potential fee increases at sites within the jurisdiction of the Mother Lode Field Office, which would require recommendations from the RAC. The RAC will also hear reports from the district and field offices. On Sept. 12, 2023, the RAC will tour Case Mountain Extensive Recreation Management Area to view the progress made since its inception. On Sept. 13, 2023, the RAC will hear about the Case Mountain Forest Health Project and its progress and trajectory toward completion. The RAC will also be briefed on projects from the district and field offices, including a wildland fire update. On Nov. 14, 2023, the RAC will tour the Berryessa Snow Mountain National Monument to view components of the management plan under development. On Nov. 15, 2023, the RAC will be briefed on the progress of the Berryessa Snow Mountain National Monument Management Plan and determine how it will continue to participate in the process. In addition, the RAC will hear reports from the district and field offices. On Feb. 27, 2024, the RAC will tour the Cotoni-Coast Dairies unit to see the updates made under the management plan. On Feb. 28, 2024, the RAC will discuss implementation of the management plan for the Cotoni-Coast Dairies unit of the California Coastal Monument, which has had its original plan modified due to changing conditions within the unit. The RAC will also hear reports from the district and field offices, including a post-season wildland fire assessment, and schedule additional meeting dates for 2024.

All meetings are open to the public. Each formal RAC meeting will have time allocated for public comments. Depending on the number of persons wishing to speak and the time available, the amount of time for oral comments may be limited. Written public comments may be sent to the BLM Central California District Office listed in the **ADDRESSES** section of this notice. All comments received will be provided to the RAC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Members of the public are welcome on field tours but must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM (see **FOR FURTHER INFORMATION CONTACT**).

Detailed minutes for the RAC meetings will be maintained in the BLM Central California District Office. Minutes will also be posted to the BLM California RAC web page.

(Authority: 43 CFR 1784.4–2)

Christopher M. Rocker Heppe,

Central California District Manager.

[FR Doc. 2023–08427 Filed 4–20–23; 8:45 am]

BILLING CODE 4331–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_HQ_FRN_MO45169797]

Notice of Availability of the Draft Programmatic Environmental Impact Statement for Approval of Herbicide Active Ingredients for Use on Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) announces the availability of the Draft Programmatic Environmental Impact Statement (EIS) for the Approval of Herbicide Active Ingredients for Use on Public Lands.

DATES: To afford the BLM the opportunity to consider comments in the Final EIS, please ensure that the BLM receives your comments within 45 days following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of the Draft EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays.

ADDRESSES: The Draft EIS is available for review on the BLM ePlanning project website at *https://go.usa.gov/xtk6a.*

Written comments related to the Herbicide Approval EIS may be submitted by any of the following methods:

- *ePlanning Website: https://go.usa.gov/xtk6a.*
- *Email: BLM_Herbicide_EIS@blm.gov.*
- *Mail:* Seth Flanigan—Project Manager, HQ–220, 1387 South Vinnell Way, Boise, ID 83709.

wDocuments pertinent to this proposal may be examined online at the ePlanning website.

FOR FURTHER INFORMATION CONTACT: Seth Flanigan, Project Manager, telephone: 208–373–4094; email: *sflanigan@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Flanigan. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM

has prepared a Draft Programmatic EIS for a review of active ingredients that may be approved for use in vegetation treatments on BLM-managed public lands, announces the beginning of the associated public review process, and seeks public input regarding the assessment and disclosure of impacts associated with this action.

Purpose and Need for the Proposed Action

The BLM's purpose and need is to improve the effectiveness of its invasive plant management efforts by allowing the use of EPA-registered active ingredients not currently authorized for use on BLM public lands. Approving additional active ingredients would diversify the BLM's herbicide treatment options and help meet the purposes that were first identified in the 2007 and 2016 Programmatic EISs related to vegetation treatments, which are to make herbicides available for vegetation treatment on public lands and to describe the stipulations that apply to their use.

Preliminary Proposed Action and Alternatives

The BLM proposes to approve several herbicide active ingredients, including aminocyclopyrachlor, clethodim, fluozifop-p-butyl, flumioxazin, imazamox, indaziflam, and oryzalin, for use in vegetation treatments on public lands. These active ingredients are registered by the EPA. In an effort to approve any of these active ingredients, the BLM will adopt and rely on Human Health and Ecological Risk Assessments prepared by the U.S. Forest Service.

Schedule for the Decision-Making Process

The BLM anticipates releasing a Final EIS in August 2023 and anticipates issuing a Record of Decision in September 2023.

Responsible Official

Assistant Director for Resources and Planning.

Nature of Decision To Be Made

Through this process, the BLM will decide whether to approve the herbicide active ingredients identified earlier for use on BLM-managed public lands. This decision will be based on the best available science and current needs for vegetation management. Any authorization to apply any of these active ingredients at a particular site will be made through a separate, site-specific decision and so is not within the scope of the programmatic EIS or potential decision described in this notice.

Public Comment Process

The BLM will host a virtual public meeting during the public comment period. The date, time, and virtual access information for this meeting is provided on the BLM website at: *https://go.usa.gov/xtk6a.*

The BLM will continue to consult with Indian Tribal Nations and Alaska Native corporations on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10.)

Brian St. George,

Acting Assistant Director, Resources and Planning.

[FR Doc. 2023–08240 Filed 4–20–23; 8:45 am]

BILLING CODE 4331–27–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Notice of Approved Class III Tribal Gaming Ordinance

AGENCY: National Indian Gaming Commission. Interior Department.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the approval of Santa Rosa Band of Cahuilla Indians (Tribe) Class III gaming ordinance by the Chairman of the National Indian Gaming Commission.

DATES: This notice is applicable April 21, 2023.

FOR FURTHER INFORMATION CONTACT: Dena Wynn, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register**, is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Every ordinance and approval thereof is posted on the Commission's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances within five (5) business days of approval.

On April 6, 2023, the Chairman of the National Indian Gaming Commission approved the Santa Rosa Band of Cahuilla Indians (Tribe) Class III Gaming Ordinance. A copy of the approval letter is posted with this notice and can be found with the approved ordinance on the NIGC's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances. A copy of the approved Class III ordinance will also be made available upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Dena Wynn, 1849 C Street NW, MS #1621, Washington, DC 20240 or at *info@nigc.gov.*

National Indian Gaming Commission.

Dated: April 17, 2023.

Rea Cisneros,

Acting General Counsel.

April 6, 2023
VIA EMAIL
Chairwoman Lovina Redner
Santa Rosa Band of Cahuilla Indians
65200 State Highway 74
Mountain Center, CA 92561
Re: Santa Rosa Band of Cahuilla Indians' Gaming Ordinance
Dear Chairwoman Redner,

This letter responds to the February 16, 2023 submission on behalf of the Santa Rosa Band of Cahuilla Indians (Tribe) informing the National Indian Gaming Commission

(NIGC) that the Tribe adopted a tribal gaming ordinance. Upon review, the ordinance is substantially similar to the NIGC Revised Model Ordinance promulgated in NIGC Bulletin 2018–1 and provides the Tribe with regulation of anticipated gaming activities. Thank you for bringing this ordinance to our attention. The ordinance, as noted above, is approved as it is consistent with the requirements of the Indian Gaming Regulatory Act and NIGC's regulations. If you have any questions or require anything further, please contact Logan Takao Cooper at (503) 318–7524 or *Logan.Takao-Cooper@nigc.gov.*

Sincerely,

E. Sequoyah Simermeyer, Chairman

cc: Vanessa Minott, Tribal Administrator
Thomas Weathers, Tribal Attorney

[FR Doc. 2023–08509 Filed 4–20–23; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0003]

Outer Continental Shelf Official Protraction Diagrams and Official Protraction Aliquot Diagrams

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the new North American Datum of 1983 (NAD83)-based Outer Continental Shelf (OCS) official protraction diagrams (OPDs) and official protraction aliquot diagrams (OPADs) depicting geographic areas in the Gulf of Mexico (GOM). These diagrams may be used for the description of potential renewable energy and mineral lease sales in the geographic areas that the diagrams represent.

ADDRESSES: Copies of the new OPDs and OPADs are available for download in .pdf format from *https://www.boem.gov/gom83-cadastral-data.*

FOR FURTHER INFORMATION CONTACT: Beth Wenstrom, Chief, Geospatial Services Division, Office of Strategic Resources, at (703) 787–1312 or via email at *beth.wenstrom@boem.gov.*

SUPPLEMENTARY INFORMATION: These diagrams represent BOEM's new OPDs and OPADs for the U.S. OCS seaward of the States of Louisiana and Texas in the NAD83 datum as described by the Submerged Lands Act. (43 U.S.C. 1301, *et seq.*). OPDs and OPADs depict the cadastral subdivisions of the OCS that legally define all leasing areas. The diagrams depict areal measurements and offshore boundaries and identify Federal and State jurisdiction for individual OCS leasing blocks. These OPDs and OPADs delineate the Submerged Lands Act boundaries and the limit of the ''8(g)/8(p) Zone'' boundaries, as provided in those sections of the OCS Lands Act 43 U.S.C. 1337(g) and (p). Available diagrams have the latest approval date under the diagram number and may also carry the name of a city, town, or prominent natural feature within them. Further information is provided on the specific OPDs and OPADs.

These new OPDs and OPADs cover the area included in the ''Call for Information and Nominations—Commercial Leasing for Wind Power Development on the Outer Continental Shelf in the Gulf of Mexico.'' See 86 FR 60283, November 1, 2021, section 3 for a detailed description of the call area. The extent of the published diagram coverage is shown in figure 1.

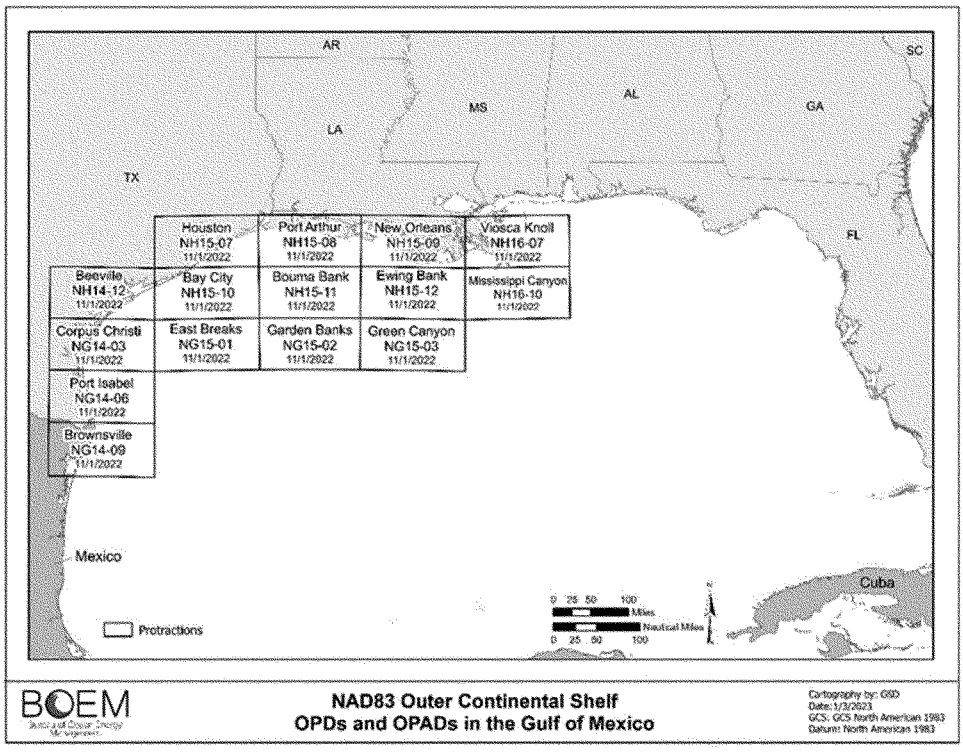

Figure 1

The new OPDS and OPADs neither supersede nor replace the North American Datum of 1927 OPDs (NAD 27 OPDs), the Texas and Louisiana leasing maps (LMs), nor notices to lessees (NTLs) previously published by BOEM and currently used for oil and gas leasing (*e.g.,* NTL No. 2009–G29). For purposes of oil and gas leasing, BOEM will continue to use the NAD 27 OPDs and LMs.

The OPDs and OPADs described in this notice are published to support potential future GOM offshore renewable energy and mineral lease sales and to supersede the provisional OPDs and OPADs published on August 19, 2022. See 87 FR 51133.

Outer Continental Shelf OPDs and OPADs in the Gulf of Mexico

Description—Date (in mm/dd/yyyy Format)

OPD Gulf of Mexico NAD83 Index Map—11/1/2022
OPD NG14–09 (Brownsville)—11/1/2022
OPAD NG14–09 (Brownsville)—11/1/2022
OPD NG14–06 (Port Isabel)—11/1/2022
OPAD NG14–06 (Port Isabel)—11/1/2022
OPD NG14–03 (Corpus Christi)—11/1/2022
OPAD NG14–03 (Corpus Christi)—11/1/2022
OPD NH14–12 (Beeville)—11/1/2022
OPAD NH14–12 (Beeville)—11/1/2022
OPD NG15–01 (East Breaks)—11/1/2022
OPAD NG15–01 (East Breaks)—11/1/2022
OPD NG15–02 (Garden Banks)—11/1/2022
OPAD NG15–02 (Garden Banks)—11/1/2022
OPD NG15–03 (Green Canyon)—11/1/2022
OPAD NG15–03 (Green Canyon)—11/1/2022
OPD NH15–10 (Bay City)—11/1/2022
OPAD NH15–10 (Bay City)—11/1/2022
OPD NH15–11 (Bouma Bank)—11/1/2022
OPAD NH15–11 (Bouma Bank)—11/1/2022
OPD NH15–12 (Ewing Bank)—11/1/2022
OPAD NH15–12 (Ewing Bank)—11/1/2022
OPD NH15–07 (Houston)—11/1/2022
OPAD NH15–07 (Houston)—11/1/2022
OPD NH15–08 (Port Arthur)—11/1/2022
OPAD NH15–08 (Port Arthur)—11/1/2022
OPD NH15–09 (New Orleans)—11/1/2022
OPAD NH15–09 (New Orleans)—11/1/2022
OPD NH16–10 (Mississippi Canyon)—11/1/2022
OPAD NH16–10 (Mississippi Canyon)—11/1/2022
OPD NH16–07 (Viosca Knoll)—11/1/2022
OPAD NH16–07 (Viosca Knoll)—11/1/2022.

Authority: OCS Lands Act, 43 U.S.C. 1331 *et seq;* 30 CFR 550.400.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

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BILLING CODE 4340–98–P

DEPARTMENT OF LABOR

Employment and Training Administration

Program Year (PY) 2023 Workforce Innovation and Opportunity Act (WIOA) Allotments; PY 2023 Wagner-Peyser Act Allotments and PY 2023 Workforce Information Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces allotments for PY 2023 for WIOA Title I Youth, Adult, and Dislocated Worker Activities programs; allotments for Employment Service (ES) activities under the Wagner-Peyser Act for PY 2023 and the allotments of Workforce Information Grants to States for PY 2023.

DATES: The Department must receive comments on the formula used to allot funds to the Outlying Areas by May 22, 2023.

ADDRESSES: Comments on this notice can be submitted electronically to the Employment and Training Administration, Office of Workforce Investment, Robert Kight, Division Chief via email, to *kight.robert@dol.gov.*

Commenters are advised that mail delivery in the Washington area may be delayed due to security concerns. The Department will receive hand-delivered comments at the above address. All overnight mail will be considered hand-delivered and must be received at the designated place by the date specified above. Please be advised that there may be a delay between when the mail is delivered to the building and when the relevant person receives it.

Comments: The Department will retain all comments on this notice and will release them upon request via email to any member of the public. The Department will retain all comments received without making any changes to the comments, including any personal information provided. The Department therefore cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and email addresses in their comments; this information would be released with the comment if the comments are requested. It is the commenter's responsibility to safeguard his or her information.

FOR FURTHER INFORMATION CONTACT: WIOA Youth Activities allotments Sara Hastings at (202) 693–3599; WIOA Adult and Dislocated Worker Activities and ES allotments—Robert Kight at (202) 693–3937; Workforce Information Grant allotments—Donald Haughton at (202) 693–2784. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: The Department is announcing WIOA allotments for PY 2023 for Youth Activities, Adults and Dislocated Worker Activities, Wagner-Peyser Act PY 2023 allotments, and PY 2023 Workforce Information Grant allotments. This notice provides information on the amount of funds available during PY 2023 to states with an approved WIOA Combined or Unified State Plan, and information regarding allotments to the Outlying Areas.

WIOA allotments for states and the state allotments for the Wagner-Peyser Act are based on formulas defined in their respective statutes. WIOA requires allotments for the Outlying Areas to be competitively awarded rather than based on a formula determined by the Secretary of Labor (Secretary) as occurred under the Workforce Investment Act (WIA). However, for PY 2023, the Consolidated Appropriations Act, 2023 waives the competition requirement, and the Secretary is using the discretionary formula rationale and methodology for allocating PY 2023 funds for the Outlying Areas (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, and the United States Virgin Islands) that was published in the **Federal Register** at 65 FR 8236 (Feb. 17, 2000). WIOA specifically included the Republic of Palau as an Outlying Area, except during any period for which the Secretary of Labor and the Secretary of Education determine that a Compact of Free Association is in effect and contains provisions for training and education assistance prohibiting the assistance provided under WIOA; no such determinations prohibiting assistance have been made. The formula that the Department of Labor (Department) used for PY 2023 is the same formula used in PY 2022 and is described in the section on Youth Activities program allotments. The Department invites comments only on

the formula used to allot funds to the Outlying Areas.

On December 29, 2022, the Consolidated Appropriations Act, 2023, Public Law 117–328 was signed into law (''the Act''). The Act, division H, title I, sections 106(b) and 107 of the Act allows the Secretary of Labor (Secretary) to set aside up to 0.5 percent of each discretionary appropriation for activities related to program integrity and 0.75 percent of most operating funds for evaluations. For 2023, as authorized by the Act, the Department has set aside $10,408,000 of the Training and Employment Services (TES) and $2,556,500 of the State Unemployment Insurance and Employment Services Operations (SUIESO) appropriations impacted in this FRN for these activities. ETA reserved these funds from the WIOA Adult, Youth, Dislocated Worker, Wagner-Peyser Act Employment Service, and Workforce Information Grant program budgets. Any funds not utilized for these reserve activities will be provided to the states. We also have attached tables listing the PY 2023 allotments for programs under WIOA title I Youth Activities (table A), Adult and Dislocated Workers Employment and Training Activities (tables B and C, respectively), and the PY 2023 Wagner-Peyser Act allotments (table D). We also have attached the PY 2023 Workforce Information Grant table (table E) and the total WIOA Youth, Adult and Dislocated Worker funding for Outlying Areas (table F).

Youth Activities Allotments. The appropriated level for PY 2023 for WIOA Youth Activities totals $948,130,000. After reducing the appropriation by $3,629,000 for set asides authorized by the Act, $944,501,000 is available for Youth Activities. Table A includes a breakdown of the Youth Activities program allotments for PY 2023 and provides a comparison of these allotments to PY 2022 Youth Activities allotments for all States and Outlying Areas. The WIOA Youth formula has a section in WIOA for a reservation for Migrant and Seasonal Farmworker (MSFW) Youth if the appropriation exceeds $925,000,000. Per WIOA 127(a)(1), ETA reserved 4 percent ($925,200) of the excess amount for MSFW Youth. For the Native American Youth program, the total amount available is 1.5 percent of the total amount for Youth Activities (after set asides authorized by the Act) after the MSFW Youth reservation (in accordance with WIOA section 127). The total funding available for the Outlying Areas was reserved at 0.25 percent of the amount appropriated for Youth Activities (after set asides authorized by the Act) after the amount reserved for MSFW Youth and Native American Youth (in accordance with WIOA section 127(b)(1)(B)(i)). On December 17, 2003, Public Law 108–188, the Compact of Free Association Amendments Act of 2003 (''the Compact''), was signed into law. The Compact specified that the Republic of Palau remained eligible for WIA title I funding. See 48 U.S.C. 1921d(f)(1)(B)(ix). WIOA sec. 512(g)(1) updated the Compact to refer to WIOA funding. The National Defense Authorization Act for Fiscal Year 2018 (division A, title XII, subtitle F, section 1259C(c) of Pub. L. 115–91) authorized WIOA title I funding to Palau through FY 2024.

Under WIA, the Secretary had discretion for determining the methodology for distributing funds to all Outlying Areas. Under WIOA the Secretary must award the funds through a competitive process. However, for PY 2023, the Consolidated Appropriations Act, 2023 waives the competition requirement regarding funding to Outlying Areas (*e.g.,* American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, and the United States Virgin Islands). For PY 2023, the Department used the same methodology used since PY 2000 (*i.e.,* we distribute funds among the Outlying Areas by formula based on relative share of the number of unemployed, a minimum of 90 percent of the prior year allotment percentage, a $75,000 minimum, and a 130 percent stop gain of the prior year share). For the relative share calculation in PY 2023, the Department used updated data obtained from the 2020 Census for American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands. For the Republic of Palau, the Department used updated data from Palau's 2020 Census. The 2020 Island Areas Censuses (IAC) operation was impacted by the COVID–19 pandemic. While the enumeration was successful, the COVID–19 pandemic impacted the quality of the detailed social, economic, and housing characteristic data for American Samoa, Guam, and the U.S. Virgin Islands. Guidance is available at *https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/island-areas-tech-docs/2020-iac-guidance.pdf.* Palau's data was obtained from the 2021 Statistical Yearbook of the Republic of Palau available at *https://www.palaugov.pw/wp-content/uploads/2022/07/2021-Statistical-Yearbook.pdf.* The Department will accept comments on this methodology. The Act additionally allows Outlying Areas to submit a single application according to the requirements established by the Secretary for a consolidated grant for Adult, Youth, and Dislocated Worker funds. Subject to approval of the grant application and other reporting requirements of the Secretary, the Act allows Outlying Areas receiving a consolidated grant to use those funds interchangeably between Adult, Youth, and Dislocated Worker programs or activities. Table F includes the total Youth, Adult and Dislocated Worker funding for Outlying Areas.

After the Department calculated the amount for the MSFW Youth, Outlying Areas and the Native American program, the amount available for PY 2023 allotments to the states is $927,098,608. This total amount is below the required $1 billion threshold specified in WIOA sec. 127(b)(1)(C)(iv)(IV); therefore, the Department did not apply the WIOA additional minimum provisions. Instead, as required by WIOA, the minimums of 90 percent of the prior year allotment percentage and 0.25 percent state minimum floor apply. WIOA also provides that no state may receive an allotment that is more than 130 percent of the allotment percentage for the state for the previous year. The three data factors required by WIOA sec. 127(b)(1)(C)(ii) for the PY 2023 Youth Activities state formula allotments are, summarized slightly, as follows:

(1) The average number of unemployed individuals in Areas of Substantial Unemployment (ASUs) for the 12-month period, July 2021–June 2022 in each state compared to the total number of unemployed individuals in ASUs in all states;

(2) Number of excess unemployed individuals or excess unemployed individuals in ASUs (depending on which is higher) averages for the same 12-month period used for ASU unemployed data compared to the total excess unemployed individuals or ASU excess number in all states; and

(3) Number of disadvantaged youth (age 16 to 21, excluding college students not in the workforce and military) from special tabulations of data from the American Community Survey (ACS), which the Department obtained from the Census Bureau in each state compared to the total number of disadvantaged youth in all states. ETA obtained updated data for use in PY 2023. The Census Bureau collected the data used in the special tabulations for disadvantaged youth between January 1, 2016–December 31, 2020.

For purposes of identifying ASUs for the Youth Activities allotment formula, the Department continued to use the data made available by BLS (as

described in the Local Area Unemployment Statistics (LAUS) Technical Memorandum No. S–22–13). For purposes of determining the number of disadvantaged youth, the Department used the special tabulations of ACS data available at: *https://www.dol.gov/agencies/eta/budget/formula/disadvantagedyouthadults.*

ETA obtained updated data for use in PY 2023 and will publish this information in a forthcoming TEGL.

Adult Employment and Training Activities Allotments. The total appropriated funds for Adult Activities in PY 2023 is $885,649,000. After reducing the appropriated amount by $2,724,000 for set asides authorized by the Act, $882,925,000 remains for Adult Activities, of which $880,717,687 is for states and $2,207,313 is for Outlying Areas. Table B shows the PY 2023 Adult Employment and Training Activities allotments and a state-by-state comparison of the PY 2023 allotments to PY 2022 allotments.

In accordance with WIOA, the Department reserved the total available for the Outlying Areas at 0.25 percent of the full amount appropriated for Adult Activities (after set asides authorized by the Act). As discussed in the Youth Activities section above, in PY 2023 the Department will distribute the Adult Activities funding for the Outlying Areas, using the same principles, formula, and data as used for outlying areas for Youth Activities. The Department will accept comments on this methodology. After determining the amount for the Outlying Areas, the Department used the statutory formula to distribute the remaining amount available for allotments to the states. The Department did not apply the WIOA minimum provisions for the PY 2023 allotments because the total amount available for the states was below the $960 million threshold required for Adult Activities in WIOA sec. 132(b)(1)(B)(iv)(IV). Instead, as required by WIOA, the minimums of 90 percent of the prior year allotment percentage and 0.25 percent state minimum floor apply. WIOA also provides that no state may receive an allotment that is more than 130 percent of the allotment percentage for the state for the previous year. The three formula data factors for the Adult Activities program are the same as those used for the Youth Activities formula, except the Department used data for the number of disadvantaged adults (age 22 to 72, excluding college students not in the workforce and military).

Dislocated Worker Employment and Training Activities Allotments. The amount appropriated for Dislocated Worker activities in PY 2023 totals $1,421,412,000. The total appropriation includes formula funds for the states, while the National Reserve is used for National Dislocated Worker Grants, technical assistance and training, demonstration projects, Workforce Opportunity for Rural Communities, Community College Grants, and the Outlying Areas' Dislocated Worker allotments. After reducing the appropriated amount by $4,055,000 for set asides authorized by the Act, a total of $1,417,357,000 remains available for Dislocated Worker activities. The amount available for Outlying Areas is $3,543,393, leaving $321,550,607 for the National Reserve and a total of $1,092,263,000 available for states. Table C shows the PY 2023 Dislocated Worker activities allotments and a state-by-state comparison of the PY 2023 allotments to PY 2022 allotments.

Similar to the Adult Activities program, the Department reserved the total available for the Outlying Areas at 0.25 percent of the full amount appropriated for Dislocated Worker Activities (after set asides authorized by the Act). Similar to Youth and Adult funds, instead of competition, in PY 2023 the Department will use the same *pro rata* share as the areas received for the PY 2023 WIOA Adult Activities program to distribute the Outlying Areas' Dislocated Worker funds, the same methodology used in PY 2022. The Department will accept comments on this methodology.

The three data factors required in WIOA sec. 132(b)(2)(B)(ii) for the PY 2023 Dislocated Worker state formula allotments are, summarized slightly, as follows:

(1) Relative number of unemployed individuals in each state, compared to the total number of unemployed individuals in all states, for the 12-month period, October 2021–September 2022;

(2) Relative number of excess unemployed individuals in each state, compared to the total excess number of unemployed individuals in all states, for the 12-month period, October 2021–September 2022; and

(3) Relative number of long-term unemployed individuals in each state, compared to the total number of long-term unemployed individuals in all states, for the 12-month period, October 2021–September 2022.

In PY 2023, under WIOA the Dislocated Worker formula uses minimum and maximum provisions. No state may receive an allotment that is less than 90 percent of the state's prior year allotment percentage (stop loss) or more than 130 percent of the state's prior year allotment percentage (stop gain).

Wagner-Peyser Act ES Allotments. The appropriated level for PY 2023 for ES grants totals $680,052,000. After reducing the appropriated amount by $2,520,500 for set asides authorized by the Act, $677,531,500 is available for ES grants. After determining the funding for Guam and the United States Virgin Islands, the Department calculated allotments to states using the formula set forth at section 6 of the Wagner-Peyser Act (29 U.S.C. 49e). The Department based PY 2023 formula allotments on each state's share of calendar year 2022 monthly averages of the civilian labor force (CLF) and unemployment. Section 6(b)(4) of the Wagner-Peyser Act requires the Secretary to set aside up to three percent of the total funds available for ES to ensure that each state will have sufficient resources to maintain statewide ES activities. In accordance with this provision, the Department included the three percent set aside funds in this total allotment. The Department distributed the set-aside funds in two steps to states that have experienced a reduction in their relative share of the total resources available this year from their relative share of the total resources available the previous year. In Step 1, states that have a CLF below one million and are also below the median CLF density were maintained at 100 percent of their relative share of prior year resources. ETA calculated the median CLF density based on CLF data provided by the BLS for calendar year 2022. The Department distributed all remaining set-aside funds on a *pro-rata* basis in Step 2 to all other states experiencing reductions in relative share from the prior year but not meeting the size and density criteria for Step 1. The distribution of ES funds (table D) includes $675,879,914 for states, as well as $1,651,586 for Outlying Areas.

Section 7(a) of the Wagner-Peyser Act (49 U.S.C. 49f(a)) authorizes states to use 90 percent of funds allotted to a state for labor exchange services and other career services such as job search and placement services to job seekers; appropriate recruitment services for employers; program evaluations; developing and providing labor market and occupational information; developing management information systems; and administering the work test for unemployment insurance claimants. Section 7(b) of the Wagner-Peyser Act states that 10 percent of the total sums allotted to each state must be reserved for use by the Governor to provide performance incentives for

public ES offices and programs, provide services for groups with special needs, and to provide for the extra costs of exemplary models for delivering services of the type described in section 7(a) and models for enhancing professional development and career advancement opportunities of state agency staff.

To provide services such as outreach to MSFWs, State Monitor Advocate (SMA) responsibilities, and others, State Workforce Agencies, (SWAs) must use Wagner-Peyser Act ES funding to provide employment services to migrant and seasonal farmworkers (MSFW), which are described at 20 CFR 651, 653, 654, and 658.

Workforce Information Grants Allotments. Total PY 2023 funding for Workforce Information Grants allotments to states is $32,000,000. After reducing the total by $36,000 for set asides authorized by the Act, $31,964,000 is available for Workforce Information Grants. Table E contains the allotment figures for each state and Outlying Area. The Department distributes the funds by administrative formula, with a reserve of $176,714 for Guam and the United States Virgin Islands. Guam and the United States Virgin Islands allotment amounts are partially based on CLF data, which the Department updated this year with data from the 2020 Census. The Department distributes the remaining funds to the states with 40 percent distributed equally to all states and 60 percent distributed based on each state's share of CLF for the 12 months ending September 2022.

TABLE A—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA YOUTH ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2023 ALLOTMENTS VS PY 2022 ALLOTMENTS

State	PY 2022	PY 2023	Difference	% Difference
Total	$928,841,800	$943,575,800	$14,734,000	1.59
Alabama	11,388,121	10,411,891	(976,230)	−8.57
Alaska	4,183,488	3,824,865	(358,623)	−8.57
Arizona	27,807,148	25,423,422	(2,383,726)	−8.57
Arkansas	5,881,616	5,543,794	(337,822)	−5.74
California	141,613,074	142,969,572	1,356,498	0.96
Colorado	13,703,113	12,528,434	(1,174,679)	−8.57
Connecticut	10,925,731	12,065,981	1,140,250	10.44
Delaware	2,350,947	2,959,957	609,010	25.90
District of Columbia	4,221,055	3,859,211	(361,844)	−8.57
Florida	42,902,700	39,224,930	(3,677,770)	−8.57
Georgia	17,404,272	15,912,317	(1,491,955)	−8.57
Hawaii	3,855,827	3,760,088	(95,739)	−2.48
Idaho	2,580,180	2,358,998	(221,182)	−8.57
Illinois	39,986,105	43,578,256	3,592,151	8.98
Indiana	15,415,332	14,093,876	(1,321,456)	−8.57
Iowa	5,512,351	5,652,031	139,680	2.53
Kansas	4,977,764	4,551,053	(426,711)	−8.57
Kentucky	12,022,727	12,961,971	939,244	7.81
Louisiana	15,380,021	14,121,001	(1,259,020)	−8.19
Maine	2,578,709	2,821,164	242,455	9.40
Maryland	13,647,037	18,022,572	4,375,535	32.06
Massachusetts	19,376,968	21,018,238	1,641,270	8.47
Michigan	33,787,421	34,408,717	621,296	1.84
Minnesota	10,497,536	9,597,650	(899,886)	−8.57
Mississippi	10,463,206	9,566,263	(896,943)	−8.57
Missouri	10,182,689	11,203,397	1,020,708	10.02
Montana	2,281,555	2,317,747	36,192	1.59
Nebraska	2,924,329	2,673,645	(250,684)	−8.57
Nevada	11,823,134	10,809,613	(1,013,521)	−8.57
New Hampshire	2,669,419	2,440,587	(228,832)	−8.57
New Jersey	26,917,413	26,580,977	(336,436)	−1.25
New Mexico	7,789,461	8,661,716	872,255	11.20
New York	68,508,072	71,279,759	2,771,687	4.05
North Carolina	22,179,701	24,201,171	2,021,470	9.11
North Dakota	2,281,555	2,317,747	36,192	1.59
Ohio	37,495,574	34,281,322	(3,214,252)	−8.57
Oklahoma	7,521,576	6,876,800	(644,776)	−8.57
Oregon	10,396,634	9,505,398	(891,236)	−8.57
Pennsylvania	38,433,440	42,912,756	4,479,316	11.65
Puerto Rico	23,575,954	21,554,940	(2,021,014)	−8.57
Rhode Island	3,633,400	3,321,932	(311,468)	−8.57
South Carolina	8,818,543	9,325,293	506,750	5.75
South Dakota	2,281,555	2,317,747	36,192	1.59
Tennessee	14,787,821	14,138,571	(649,250)	−4.39
Texas	73,435,799	91,789,734	18,353,935	24.99
Utah	3,842,315	3,512,938	(329,377)	−8.57
Vermont	2,281,555	2,317,747	36,192	1.59
Virginia	15,915,259	14,550,947	(1,364,312)	−8.57
Washington	20,928,382	19,134,328	(1,794,054)	−8.57
West Virginia	6,015,297	5,499,645	(515,652)	−8.57
Wisconsin	10,957,464	10,018,152	(939,312)	−8.57
Wyoming	2,281,555	2,317,747	36,192	1.59

TABLE A—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA YOUTH ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2023 ALLOTMENTS VS PY 2022 ALLOTMENTS—Continued

State	PY 2022	PY 2023	Difference	% Difference
State Total	912,621,900	927,098,608	14,476,708	1.59
American Samoa	244,726	322,923	78,197	31.95
Guam	830,674	886,216	55,542	6.69
Northern Marianas	453,848	414,942	(38,906)	−8.57
Palau	75,000	75,000	0	0.00
Virgin Islands	683,025	624,474	(58,551)	−8.57
Outlying Areas Total	2,287,273	2,323,555	36,282	1.59
Native Americans	13,932,627	14,153,637	221,010	1.59

TABLE B—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA ADULT ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2023 ALLOTMENTS VS PY 2022 ALLOTMENTS

State	PY 2022	PY 2023	Difference	% Difference
Total	$867,625,000	$882,925,000	$15,300,000	1.76
Alabama	11,031,823	10,103,726	(928,097)	−8.41
Alaska	3,923,005	3,592,966	(330,039)	−8.41
Arizona	26,301,024	24,088,343	(2,212,681)	−8.41
Arkansas	5,680,370	5,361,433	(318,937)	−5.61
California	136,107,910	137,974,143	1,866,233	1.37
Colorado	12,435,718	11,389,512	(1,046,206)	−8.41
Connecticut	9,952,310	10,953,250	1,000,940	10.06
Delaware	2,254,630	2,853,613	598,983	26.57
District of Columbia	3,820,554	3,499,134	(321,420)	−8.41
Florida	43,812,497	40,126,592	(3,685,905)	−8.41
Georgia	16,678,811	15,275,638	(1,403,173)	−8.41
Hawaii	3,656,552	3,803,223	146,671	4.01
Idaho	2,309,760	2,201,794	(107,966)	−4.67
Illinois	37,628,657	41,284,587	3,655,930	9.72
Indiana	14,145,314	12,955,282	(1,190,032)	−8.41
Iowa	4,015,782	4,080,702	64,920	1.62
Kansas	4,215,743	3,861,076	(354,667)	−8.41
Kentucky	11,923,641	12,635,450	711,809	5.97
Louisiana	14,842,227	13,875,218	(967,009)	−6.52
Maine	2,452,358	2,591,045	138,687	5.66
Maryland	13,150,215	17,396,744	4,246,529	32.29
Massachusetts	16,456,845	18,040,385	1,583,540	9.62
Michigan	31,085,117	31,989,992	904,875	2.91
Minnesota	8,866,650	8,120,707	(745,943)	−8.41
Mississippi	10,013,878	9,171,420	(842,458)	−8.41
Missouri	9,425,238	10,386,320	961,082	10.20
Montana	2,163,640	2,201,794	38,154	1.76
Nebraska	2,237,848	2,201,794	(36,054)	−1.61
Nevada	11,527,452	10,557,658	(969,794)	−8.41
New Hampshire	2,531,459	2,318,490	(212,969)	−8.41
New Jersey	26,373,115	25,950,239	(422,876)	−1.60
New Mexico	7,526,365	8,347,447	821,082	10.91
New York	66,720,730	69,333,637	2,612,907	3.92
North Carolina	21,080,103	22,972,996	1,892,893	8.98
North Dakota	2,163,640	2,201,794	38,154	1.76
Ohio	34,884,358	31,949,569	(2,934,789)	−8.41
Oklahoma	7,114,498	6,515,962	(598,536)	−8.41
Oregon	10,110,571	9,259,978	(850,593)	−8.41
Pennsylvania	35,455,175	39,877,363	4,422,188	12.47
Puerto Rico	24,441,918	22,385,642	(2,056,276)	−8.41
Rhode Island	3,135,173	2,871,414	(263,759)	−8.41
South Carolina	8,493,087	9,001,080	507,993	5.98
South Dakota	2,163,640	2,201,794	38,154	1.76
Tennessee	14,440,407	13,853,614	(586,793)	−4.06
Texas	69,525,372	86,292,577	16,767,205	24.12
Utah	2,988,412	2,737,000	(251,412)	−8.41
Vermont	2,163,640	2,201,794	38,154	1.76
Virginia	14,854,061	13,604,402	(1,249,659)	−8.41
Washington	19,695,933	18,038,932	(1,657,001)	−8.41
West Virginia	5,876,607	5,382,213	(494,394)	−8.41
Wisconsin	9,438,464	8,644,415	(794,049)	−8.41

TABLE B—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA ADULT ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2023 ALLOTMENTS VS PY 2022 ALLOTMENTS—Continued

State	PY 2022	PY 2023	Difference	% Difference
Wyoming	2,163,640	2,201,794	38,154	1.76
State Total	865,455,937	880,717,687	15,261,750	1.76
American Samoa	231,650	306,253	74,603	32.21
Guam	786,288	840,469	54,181	6.89
Northern Marianas	429,597	393,455	(36,142)	-8.41
Palau	75,000	75,000	0	0.00
Virgin Islands	646,528	592,136	(54,392)	−8.41
Outlying Areas Total	2,169,063	2,207,313	38,250	1.76

TABLE C—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2023 ALLOTMENTS VS PY 2022 ALLOTMENTS

State	PY 2022	PY 2023	Difference	% Difference
Total	$1,371,910,000	$1,417,357,000	$45,447,000	3.31
Alabama	14,354,136	13,164,128	(1,190,008)	−8.29
Alaska	6,952,482	6,376,097	(576,385)	−8.29
Arizona	32,882,281	30,156,226	(2,726,055)	−8.29
Arkansas	5,004,071	4,589,216	(414,855)	−8.29
California	172,716,686	158,397,875	(14,318,811)	−8.29
Colorado	15,998,009	14,671,719	(1,326,290)	−8.29
Connecticut	13,434,048	12,320,319	(1,113,729)	−8.29
Delaware	2,792,814	2,561,280	(231,534)	−8.29
District of Columbia	9,172,120	12,150,262	2,978,142	32.47
Florida	46,716,550	42,843,586	(3,872,964)	−8.29
Georgia	30,438,974	27,915,478	(2,523,496)	−8.29
Hawaii	2,787,961	2,556,829	(231,132)	−8.29
Idaho	1,847,221	2,007,847	160,626	8.70
Illinois	46,778,485	61,967,225	15,188,740	32.47
Indiana	13,628,787	12,498,913	(1,129,874)	−8.29
Iowa	4,497,235	4,124,399	(372,836)	−8.29
Kansas	4,139,435	3,796,262	(343,173)	−8.29
Kentucky	13,250,923	12,152,376	(1,098,547)	−8.29
Louisiana	16,817,514	15,423,284	(1,394,230)	−8.29
Maine	2,242,181	2,056,296	(185,885)	−8.29
Maryland	17,212,091	15,785,149	(1,426,942)	−8.29
Massachusetts	22,669,765	20,790,363	(1,879,402)	−8.29
Michigan	31,292,714	28,698,440	(2,594,274)	−8.29
Minnesota	9,426,224	8,644,757	(781,467)	−8.29
Mississippi	13,933,482	12,778,348	(1,155,134)	−8.29
Missouri	10,956,060	10,047,765	(908,295)	−8.29
Montana	1,596,891	1,464,503	(132,388)	−8.29
Nebraska	2,006,552	1,840,202	(166,350)	−8.29
Nevada	14,994,671	19,863,366	4,868,695	32.47
New Hampshire	2,118,850	1,943,190	(175,660)	−8.29
New Jersey	36,473,636	33,449,845	(3,023,791)	−8.29
New Mexico	14,928,088	19,466,660	4,538,572	30.40
New York	82,585,211	108,043,045	25,457,834	30.83
North Carolina	23,457,549	21,512,837	(1,944,712)	−8.29
North Dakota	813,070	745,664	(67,406)	−8.29
Ohio	30,695,154	28,150,420	(2,544,734)	−8.29
Oklahoma	6,139,713	5,630,710	(509,003)	−8.29
Oregon	10,443,575	9,577,767	(865,808)	−8.29
Pennsylvania	42,934,413	55,648,335	12,713,922	29.61
Puerto Rico	62,908,530	83,334,615	20,426,085	32.47
Rhode Island	3,552,454	3,257,943	(294,511)	−8.29
South Carolina	11,779,701	10,803,123	(976,578)	−8.29
South Dakota	1,322,041	1,212,439	(109,602)	−8.29
Tennessee	14,429,101	13,232,879	(1,196,222)	−8.29
Texas	83,358,322	76,447,629	(6,910,693)	−8.29
Utah	3,518,216	3,226,544	(291,672)	−8.29
Vermont	1,005,465	922,108	(83,357)	−8.29
Virginia	14,152,452	12,979,165	(1,173,287)	−8.29
Washington	22,254,509	20,409,533	(1,844,976)	−8.29
West Virginia	10,610,160	9,730,541	(879,619)	−8.29
Wisconsin	10,874,839	9,973,277	(901,562)	−8.29

TABLE C—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA DISLOCATED WORKER ACTIVITIES STATE ALLOTMENTS COMPARISON OF PY 2023 ALLOTMENTS VS PY 2022 ALLOTMENTS—Continued

State	PY 2022	PY 2023	Difference	% Difference
Wyoming	1,005,588	922,221	(83,367)	−8.29
State Total	1,071,901,000	1,092,263,000	20,362,000	1.90
American Samoa	366,291	491,627	125,336	34.22
Guam	1,243,297	1,349,203	105,906	8.52
Northern Marianas	679,289	631,612	(47,677)	−7.02
Palau	118,592	120,397	1,805	1.52
Virgin Islands	1,022,306	950,554	(71,752)	−7.02
Outlying Areas Total	3,429,775	3,543,393	113,618	3.31
National Reserve	296,579,225	321,550,607	24,971,382	8.42

TABLE D—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION EMPLOYMENT SERVICE (WAGNER-PEYSER) PY 2023 VS PY 2022 ALLOTMENTS

State	PY 2022	PY 2023	Difference	% Difference
Total	$672,277,000	$677,531,500	$5,254,500	0.78
Alabama	8,132,935	8,157,290	24,355	0.30
Alaska	7,307,972	7,365,091	57,119	0.78
Arizona	14,420,924	14,367,195	(53,729)	−0.37
Arkansas	4,980,892	5,068,542	87,650	1.76
California	82,214,927	81,499,358	(715,569)	−0.87
Colorado	12,535,126	12,513,087	(22,039)	−0.18
Connecticut	7,441,172	7,546,077	104,905	1.41
Delaware	1,900,099	2,041,275	141,176	7.43
District of Columbia	1,918,142	1,924,337	6,195	0.32
Florida	38,879,016	38,791,016	(88,000)	−0.23
Georgia	18,713,831	18,884,035	170,204	0.91
Hawaii	2,851,951	2,811,112	(40,839)	−1.43
Idaho	6,088,841	6,136,431	47,590	0.78
Illinois	26,228,600	26,805,431	576,831	2.20
Indiana	12,199,107	12,198,042	(1,065)	−0.01
Iowa	5,922,601	6,083,922	161,321	2.72
Kansas	5,369,400	5,370,575	1,175	0.02
Kentucky	7,699,960	8,028,686	328,726	4.27
Louisiana	8,565,336	8,511,466	(53,870)	−0.63
Maine	3,620,977	3,649,278	28,301	0.78
Maryland	12,301,343	12,638,485	337,142	2.74
Massachusetts	14,909,252	14,841,028	(68,224)	−0.46
Michigan	19,223,218	19,625,843	402,625	2.09
Minnesota	10,949,342	10,868,056	(81,286)	−0.74
Mississippi	5,216,683	5,186,386	(30,297)	−0.58
Missouri	11,234,763	11,219,804	(14,959)	−0.13
Montana	4,975,831	5,014,722	38,891	0.78
Nebraska	4,580,711	4,489,626	(91,085)	−1.99
Nevada	6,837,890	6,814,792	(23,098)	−0.34
New Hampshire	2,612,731	2,625,284	12,553	0.48
New Jersey	18,696,713	18,623,063	(73,650)	−0.39
New Mexico	5,583,759	5,627,402	43,643	0.78
New York	40,021,771	39,960,265	(61,506)	−0.15
North Carolina	18,987,978	19,548,712	560,734	2.95
North Dakota	5,066,886	5,106,489	39,603	0.78
Ohio	22,422,864	22,892,147	469,283	2.09
Oklahoma	6,664,893	6,825,929	161,036	2.42
Oregon	8,219,250	8,641,616	422,366	5.14
Pennsylvania	25,780,925	25,998,063	217,138	0.84
Puerto Rico	5,922,930	5,882,119	(40,811)	−0.69
Rhode Island	2,226,894	2,217,710	(9,184)	−0.41
South Carolina	8,758,024	8,820,458	62,434	0.71
South Dakota	4,682,968	4,719,570	36,602	0.78
Tennessee	12,337,195	12,583,460	246,265	2.00
Texas	56,597,052	57,724,443	1,127,391	1.99
Utah	5,574,504	5,704,059	129,555	2.32
Vermont	2,193,768	2,210,914	17,146	0.78
Virginia	15,417,551	15,516,383	98,832	0.64
Washington	15,464,004	15,860,228	396,224	2.56
West Virginia	5,360,119	5,402,014	41,895	0.78

TABLE D—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION EMPLOYMENT SERVICE (WAGNER-PEYSER) PY 2023 VS PY 2022 ALLOTMENTS—Continued

State	PY 2022	PY 2023	Difference	% Difference
Wisconsin	11,191,329	11,276,927	85,598	0.76
Wyoming	3,633,273	3,661,671	28,398	0.78
State Total	670,638,223	675,879,914	5,241,691	0.78
Guam	314,574	317,033	2,459	0.78
Virgin Islands	1,324,203	1,334,553	10,350	0.78
Outlying Areas Total	1,638,777	1,651,586	12,809	0.78

TABLE E—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WORKFORCE INFORMATION GRANTS TO STATES PY 2023 VS PY 2022 ALLOTMENTS

State	PY 2022	PY 2023	Difference	% Difference
Total	$31,956,000	$31,964,000	$8,000	0.03
Alabama	506,864	507,924	1,060	0.21
Alaska	285,764	286,168	404	0.14
Arizona	669,420	657,611	(11,809)	−1.76
Arkansas	404,322	400,348	(3,974)	−0.98
California	2,470,599	2,464,249	(6,350)	−0.26
Colorado	619,163	616,964	(2,199)	−0.36
Connecticut	455,646	462,764	7,118	1.56
Delaware	301,848	302,193	345	0.11
District of Columbia	292,570	288,891	(3,679)	−1.26
Florida	1,461,300	1,469,215	7,915	0.54
Georgia	851,132	852,260	1,128	0.13
Hawaii	320,990	322,411	1,421	0.44
Idaho	350,918	353,672	2,754	0.78
Illinois	973,900	987,543	13,643	1.40
Indiana	637,447	632,989	(4,458)	−0.70
Iowa	438,745	440,864	2,119	0.48
Kansas	422,438	417,786	(4,652)	−1.10
Kentucky	478,220	482,524	4,304	0.90
Louisiana	488,417	485,663	(2,754)	−0.56
Maine	324,031	322,796	(1,235)	−0.38
Maryland	612,523	614,643	2,120	0.35
Massachusetts	681,313	678,587	(2,726)	−0.40
Michigan	804,659	803,595	(1,064)	−0.13
Minnesota	601,540	599,354	(2,186)	−0.36
Mississippi	394,407	390,181	(4,226)	−1.07
Missouri	606,182	599,314	(6,868)	−1.13
Montana	307,706	309,540	1,834	0.60
Nebraska	364,735	367,117	2,382	0.65
Nevada	426,010	420,134	(5,876)	−1.38
New Hampshire	333,085	332,764	(321)	−0.10
New Jersey	765,235	782,350	17,115	2.24
New Mexico	356,841	353,848	(2,993)	−0.84
New York	1,339,210	1,336,973	(2,237)	−0.17
North Carolina	835,128	831,353	(3,775)	−0.45
North Dakota	291,967	291,755	(212)	−0.07
Ohio	913,859	911,075	(2,784)	−0.30
Oklahoma	463,701	460,596	(3,105)	−0.67
Oregon	498,069	497,674	(395)	−0.08
Pennsylvania	985,407	986,238	831	0.08
Puerto Rico	369,856	383,058	13,202	3.57
Rhode Island	308,165	310,763	2,598	0.84
South Carolina	525,780	520,463	(5,317)	−1.01
South Dakota	299,791	299,427	(364)	−0.12
Tennessee	636,477	634,898	(1,579)	−0.25
Texas	1,907,849	1,918,307	10,458	0.55
Utah	439,232	443,356	4,124	0.94
Vermont	281,711	283,068	1,357	0.48
Virginia	745,168	744,227	(941)	−0.13
Washington	704,841	707,273	2,432	0.35
West Virginia	337,779	336,359	(1,420)	−0.42
Wisconsin	608,147	606,138	(2,009)	−0.33
Wyoming	279,199	278,023	(1,176)	−0.42

TABLE E—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WORKFORCE INFORMATION GRANTS TO STATES PY 2023 VS PY 2022 ALLOTMENTS—Continued

State	PY 2022	PY 2023	Difference	% Difference
State Total	31,779,306	31,787,286	7,980	0.03
Guam	93,031	97,657	4,626	4.97
Virgin Islands	83,663	79,057	(4,606)	−5.51
Outlying Areas Total	176,694	176,714	20	0.01

TABLE F—U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION WIOA YOUTH, ADULT, AND DISLOCATED WORKER OUTLYING AREAS FUNDING PY 2023

	Youth	Adult	Dislocated worker	Total
American Samoa	322,923	306,253	491,627	1,120,803
Guam	886,216	840,469	1,349,203	3,075,888
Northern Marianas	414,942	393,455	631,612	1,440,009
Palau	75,000	75,000	120,397	270,397
Virgin Islands	624,474	592,136	950,554	2,167,164
Outlying Areas Total	2,323,555	2,207,313	3,543,393	8,074,261

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–08313 Filed 4–20–23; 8:45 am]

BILLING CODE 4510–FR–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 23–03]

Notice of Entering Into a Compact With the Government of Indonesia

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Millennium Challenge Act of 2003, as amended, the Millennium Challenge Corporation (MCC) is publishing a summary of the Millennium Challenge Compact (Compact) between the United States of America, acting through MCC, and the Government of Indonesia. Representatives of MCC and the Government of Indonesia executed the Compact on April 13, 2023. The complete text of the Compact has been posted at: *https://www.mcc.gov/content/uploads/compact-indonesia-infrastructure-and-finance.pdf.*

(Authority: 22 U.S.C. 7709 (b)(3))

Dated: April 17, 2023.

Gina Porto Spiro,

Acting Vice President, General Counsel, and Corporate Secretary.

Summary of Indonesia Infrastructure and Finance Compact

MCC has signed a five-year, $649,000,000 Compact with the Government of Indonesia aimed at reducing poverty through economic growth.

The Compact seeks to assist the Government of Indonesia in addressing a binding constraint to economic growth: costly and underdeveloped financial intermediation, by investing in needed infrastructure project preparation and structured finance solutions, and in increased access to finance for micro, small, and medium enterprises. The Compact aims to unlock financing flows in a way that will catalyze economic growth and leverage Indonesia's own resources. The Compact will address this constraint through three projects:

(1) Advancing Transport and Logistics Accessibility Services (ATLAS) Project;

(2) Financial Markets Development Project (FMD) Project;

(3) Access to Finance for Women-owned/Micro-, Small and Medium Enterprises (MSME Finance) Project.

Project Summaries

The objective of the ATLAS Project is to improve transport planning and preparation in the target provinces, responding to the root cause of inadequate infrastructure project preparation. The project includes four activities:

- *Transport Planning Reform Activity:* This activity will develop two proof-of-concept multi-modal transport planning projects to influence the Government of Indonesia to embrace the necessary institutional, legal, and regulatory reforms required to mandate and mainstream a multi-modal transport planning approach.
- *Good Practice Infrastructure Projects Activity:* This activity aims to support five infrastructure projects, which are intended to demonstrate innovative and strengthened approaches to project preparation, structuring and financing, and procurement and implementation, so that subnational governments endorse and promote Public Investment Management Guidelines principles.
- *Public Investment Management Guidelines (PIMG) Activity:* This activity will create a public, online suite of Public Investment Management Guidelines for infrastructure, designed to improve the effectiveness and efficiency of public investment.
- *Project Preparation and Delivery Facility Activity:* This activity will provide project preparation, structuring, procurement, and project delivery support to sub-national governments.

The objective of the FMD Project is to reach financial close on transactions using structured finance, including participation by institutional investors and with a focus on local currency transactions, responding to the root causes of underdeveloped project financing market and capital markets. The project includes three activities:

- *Capacity Building/Technical Assistance Activity:* This activity aims

to build capacity for institutional change within the financial market ecosystem, including in the areas of green and sub-national finance.

- *Transaction Advisory Services Activity:* This activity will provide transaction advisory services to originate approximately 10 proof-of-concept demonstration transactions.
- *Blended Finance Delivery Mechanism Activity:* This activity aims to mobilize commercial financing for sub-projects by providing blended finance grants.

The objective of the MSME Finance Project is to increase lending by formal financial service providers to MSMEs and W/MSMEs in the target provinces to support their businesses, responding to the root causes of information asymmetry and borrowers' constraints. The project includes four activities:

- *Gender-inclusive Value Chain Finance Activity:* This activity will provide non real property-based collateral financing to qualified Women-owned/Micro-, Small and Medium Enterprises (W/MSMEs) operating within growing sectors in the five target provinces.
- *Digital and Financial Literacy Enhancement Activity:* This activity will support and enhance the viability of W/MSMEs by providing technical assistance, digital and financial literacy training, and other demand driven business development support to W/MSMEs.
- *MSME Capacity Enhancement Activity:* This activity will support growth-oriented W/MSMEs that are in an earlier stage of their journey toward formalization and eventually toward formal finance. The activity will provide capacity enhancement training to eligible W/MSMEs to develop business skills, access markets, and increase sales.
- *Augmenting Government Data on MSMEs:* This activity will support the Government of Indonesia in gathering and analyzing MSME financial and technical performance data.

Policy Reform and the Compact

The ATLAS Project aims to strengthen environmentally friendly and gender-responsive, inclusive infrastructure preparation and delivery processes at all stages of the infrastructure project lifecycle, and creation of the PIMG will require new regulations to mandate the use of the PIMG and significant adjustment of technical standards and operating procedures at the national level. Similarly, the key policy, legal, regulatory, and institutional reforms that will be funded by the Compact include fundamentally changing the approach to transport planning by replacing the current single-mode planning exercises carried out separately at the three levels of government (national, provincial, district/city) with a multi-modal integrated approach. This may require adjustment of the relevant legal and regulatory framework in the transport and planning area.

The policy and institutional reform approach of the FMD Project will be supportive of a multi-donor push to improve the policy environment for infrastructure finance, contributing to reform efforts at the national level, considering lessons learned from the ATLAS Project's province-level engagement.

A condition precedent to entry into force of the Compact is the complete legal establishment and staffing of the accountable entity, the Millennium Challenge Account Indonesia II (MCA-Indonesia II), including the issuance of all relevant ministerial instructions and decrees. The Government of Indonesia already enacted the initial decree to establish MCA-Indonesia II; however, several additional steps remain that will be critical to complete to ensure MCA-Indonesia II's ability to implement the program quickly and efficiently.

Compact Overview and Budget

Below is a summary describing the components of the Compact with the Government of Indonesia. The budget of the Compact is approximately $698,000,000, which includes up to $649,000,000 funded by MCC and a Government of Indonesia contribution of at least $48,675,000.

TABLE 1—INDONESIA COMPACT BUDGET

Component	Amount [1]
1. Advancing Transport and Logistics Accessibility Services	$350,270,207
Activity 1.1 Transport Planning Reform	27,021,409
Activity 1.2 Good Practice Infrastructure Projects	195,385,571
Activity 1.3 Public Investment Management Guidelines	18,707,129
Activity 1.4 Project Preparation and Delivery Facility	95,614,215
Activity 1.5 Support Services	13,541,883
2. Financial Markets Development Project	95,914,256
Activity 2.1 Capacity Building/Technical Assistance	26,631,869
Activity 2.2 Transaction Advisory Services	15,437,809
Activity 2.3 Blended Finance Delivery Mechanism	53,844,578
3. Access to Finance for Women-owned/Micro-, Small and Medium Enterprises Project	135,826,437
Activity 3.1 Gender Inclusive Value Chain Finance	72,032,840
Activity 3.2 Digital and Financial Literacy Enhancements	25,044,897
Activity 3.3 MSME Capacity Enhancement	32,512,990
Activity 3.4 Augmenting Government Data on MSMEs	6,235,710
4. Monitoring and Evaluation	7,000,000
5. Program Administration and Oversight	59,989,101
Total MCC Funding	649,000,000
Government of Indonesia Contribution	48,675,000
Total Compact	697,675,000

[1] Numbers in table are rounded to the nearest dollar; due to rounding, they may appear to add up to more than $649,000,000. However, the total MCC Funding compact budget amount is $649,000,000.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 23–034]

Name of Information Collection: NASA International Space Apps Challenge Applications

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of new information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by May 22, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–3292, or *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports NASA's International Space Apps Challenge, an international hackathon for coders, scientists, designers, storytellers, makers, builders, technologists, and others, where teams can engage with NASA's free and open data to address challenges we face on Earth and in space. This collection will consist of two applications, one for Navigators and one for Collaborators.

Navigators are Space Apps community members who have demonstrated excellence in the program or excellence in relevant fields including, but not limited to: science, data, technology, and space. By recognizing these exemplary community members as Navigators, the hackathon connects the tens of thousands of Space Apps participants with community expertise that can enhance participant problem solving. To be eligible to be a Navigator, applicants must have participated in Space Apps in some way (*e.g.,* participant or Local Lead) at least 5 times, or demonstrated equivalent relevant experience in another NASA program.

Each year organizations around the world come forth to engage with NASA's International Space Apps Challenge. We collaborate with a selection of these organizations, called Space Apps Collaborators, to:

- Increase awareness of NASA's International Space Apps Challenge.
- Attract a diversity of participants to NASA's International Space Apps Challenge.
- Provide participants with optional tools and resources that enable the creation of solutions in NASA's International Space Apps Challenge.

This information will be used by the Space Apps Global Organizing Team during the Navigator and Collaborator selection process (approx. 3 months), to gain insight into the applicants' background, experience, and interest in the program. Additionally, this information will be used by NASA's Office of General Counsel (OGC) and NASA's Office of International and Interagency Relations (OIIR) in their review of applicants.

II. Methods of Collection

Electronic.

III. Data

Title: NASA International Space Apps Challenge Applications.

OMB Number: New.

Type of Review: New.

Affected Public: Individuals.

Estimated Annual Number of Activities: 2.

Estimated Number of Respondents per Activity: 50.

Annual Responses: 100.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 33.

Estimated Total Annual Cost: $21,000.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–08448 Filed 4–20–23; 8:45 am]
BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Education and Human Resources (#1119) (Hybrid Meeting).

Date and Time: Wednesday, May 31, 2023; 9:30 a.m.–5 p.m. (EDT); Thursday, June 1, 2023; 9:30 a.m.–4 p.m. (EDT).

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Hybrid).

All visitors may attend the meeting virtually. To attend the virtual meeting, all visitors must register at least 48 hours prior to the meeting at *https://nsf.zoomgov.com/webinar/register/WN_KwsbCXmiQuy0QZ1pPS2jjg.*

The final meeting agenda will be posted on the EHR Advisory Committee website at: *https://www.nsf.gov/ehr/advisory.jsp.*

Type of Meeting: Open.

Contact Person: Mr. Keaven M. Stevenson, National Science Foundation, 2415 Eisenhower Avenue, Room C11001, Alexandria, VA 22314; phone: (703) 292–8600/email: (*kstevens@nsf.gov*).

Summary of Minutes: Minutes and meeting materials will be available on the EHR Advisory Committee website at *http://www.nsf.gov/ehr/advisory.jsp* or can be obtained from Dr. Bonnie A. Green, National Science Foundation, 2415 Eisenhower Avenue, Room C11000, Alexandria, VA 22314; phone (703) 292–8600/email (*bongreen@nsf.gov*).

Purpose of Meeting: To provide advice with respect to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda: Meeting Theme: Expanding Opportunities in STEM: An American Imperative.

Wednesday, May 31, 2023, 9:30–5 p.m. (EDT)

- Welcoming Remarks: EHR Advisory Committee Chair and Assistant Director
- Session 1: Expanding Understanding of Knowledge Capital: Breakout Sessions
- Session 2: Expanding Partnerships: Directorate for STEM Education (EDU) and Directorate for Technology, Innovation, and Partnership Discussion
- Session 3: Expanding Outreach and Engagement: Centers and Hubs
- Session 4: Committee of Visitors Reports for both the Division of Undergraduate Education and Division of Graduate Education
- Closing Remarks: EHR Advisory Committee Chair and Assistant Director

Thursday, June 1, 2023, 9:30 a.m.–4 p.m. (EDT)

- Session 5: Expanding Understanding of Knowledge Capital: AC Comments and Recommendations
- Session 6: Expanding Outreach and Engagement: Targeted Initiative Breakout Sessions
- Session 7: Expanding Partnerships: Direct Partnership Guidance
- Session 8: Advisory Committee for Environmental Research and Education Discussion
- Discussion: EHR Advisory Committee along with NSF Chief Operating Officer
- Closing Remarks: EHR Advisory Committee Chair and Assistant Director

Dated: April 18, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023–08486 Filed 4–20–23; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, April 20, 2023.

PLACE: 1255 Union Street NE, Fifth Floor, Washington, DC 20002.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Regular Board of Directors meeting.

The General Counsel of the Corporation has certified that in his opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (4) permit closure of the following portion(s) of this meeting:

- Executive Session

Agenda

I. CALL TO ORDER
II. Approval of Government in Sunshine Act Notice Waiver for a Meeting of the Board of Directors
III. FY2022 External Audit Discussion with BDO Auditors
IV. Sunshine Act Approval of Executive (Closed) Session
V. Executive Session with BDO Auditors
VI. Special Topic
VII. Executive Session: Report from CEO
VIII. Executive Session: Report from CFO
IX. Executive Session: General Counsel Report
X. Executive Session: NeighborWorks Compass Update
XI. Action Item Approval of Meeting Minutes
XII. Action Item Appointment of Adrianne Todman to Audit Committee
XIII. Approval of FY2022 External Audit
XIV. Action Item Cigna Special Delegation
XV. Action Item NW Compass: Strategy and Contracting Authority
XVI. Discussion Item March 16 Audit Committee Report
XVII. Discussion Item Report from CIO
XVIII. Discussion Item IT Tech Support Contract—Request to Increase Contract Amount
XIX. Capital Corporation Update and Grant Request for June
XX. Discussion Item Investment Policy Review
XXI. Discussion Item Expanded Spending Authority for Large Events
XXII. Management Program Background and Updates
XXIII. Adjournment

PORTIONS OPEN TO THE PUBLIC: Everything except the Executive Session.

PORTIONS CLOSED TO THE PUBLIC: Executive Session.

CONTACT PERSON FOR MORE INFORMATION: Lakeyia Thompson, Special Assistant, (202) 524–9940; *Lthompson@nw.org.*

Lakeyia Thompson,

Special Assistant.

[FR Doc. 2023–08531 Filed 4–19–23; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 24, May 1, 8, 15, 22, 29, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of April 24, 2023

There are no meetings scheduled for the week of April 24, 2023.

Week of May 1, 2023—Tentative

There are no meetings scheduled for the week of May 1, 2023.

Week of May 8, 2023—Tentative

There are no meetings scheduled for the week of May 8, 2023.

Week of May 15, 2023—Tentative

Tuesday, May 16, 2023

9:00 a.m. Update on 10 CFR part 53 Licensing and Regulation of Advanced Nuclear Reactors (Public Meeting). (Contact: Scott Tonsfeldt: 301–415–1783)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Thursday, May 18, 2023

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting). Contact: Jeffrey Lynch: 301–415–5041)

Additional Information: The meeting will be held in the Commissioners'

Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of May 22, 2023—Tentative

There are no meetings scheduled for the week of May 22, 2023.

Week of May 29, 2023—Tentative

There are no meetings scheduled for the week of May 29, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: April 19, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–08566 Filed 4–19–23; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–135 and CP2023–137]

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:* April 24, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–135 and CP2023–137; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 115 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 14, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Arif Hafiz; *Comments Due:* April 24, 2023.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2023–08402 Filed 4–20–23; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: Tuesday, May 9, 2023, at 9:00 a.m.; Tuesday, May 9, 2023, at 4:00 p.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW, in the Benjamin Franklin Room.

STATUS: Tuesday, May 9, 2023, at 9:00 a.m.–Closed. Tuesday, May 9, 2023, at 4:00 p.m.–Open.

MATTERS TO BE CONSIDERED:

Tuesday, May 9, 2023, at 9:00 a.m. (Closed)

1. Strategic Issues.
2. Financial and Operational Matters.
3. Executive Session.
4. Administrative Items.

Tuesday, May 9, 2023, at 4:00 p.m. (Open)

1. Remarks of the Chairman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.
3. Approval of the Minutes.
4. Committee Reports.
5. Quarterly Financial Report.
6. Quarterly Service Performance Report.
7. Approval of Tentative Agenda for the August 8 Meeting.

A public comment period will begin immediately following the adjournment of the open session on May 9, 2023. During the public comment period, which shall not exceed 45 minutes, members of the public may comment on any item or subject listed on the agenda for the open session. Registration of speakers at the public comment period is required. Additionally, the public will be given the option to join the public comment session and participate via teleconference. Should you wish to participate via teleconference, you will be required to give your first and last name, a valid email address to send an invite and a phone number to reach you should a technical issue arise. Speakers may register online at *https://www.surveymonkey.com/r/bog-05-09-2023.* No more than three minutes shall be allotted to each speaker. The time allotted to each speaker will be determined after registration closes.

Registration for the public comment period, either in person or via teleconference, will end on May 7 at noon ET. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board of Governors, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2023–08616 Filed 4–19–23; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–112, OMB Control No. 3235–0101]

Proposed Collection; Comment Request; Extension: Form 144—Notice of Proposed Sale of Securities Pursuant to Rule 144 Under the Securities Act of 1933

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 144 (17 CFR 239.144) is used to report the sale of securities during any three-month period that exceeds 5,000 shares or other units or has an aggregate sales price that does not exceed $50,000. Under Sections 2(a)(11), 4(a)(1), 4a(2), 4(a)(4) and 19(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)(11), 77d(a)(1), 77d(a)(2), 77d(a)(4) and 77s (a)) and Rule 144 (17 CFR 230.144) there under, the Commission is authorize to solicit the information required to be supplied by Form 144. Form 144 takes approximately 1 burden hour per response and is filed by 33,725 respondents for a total of 33,725 total burden hours.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by June 20, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08425 Filed 4–20–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–410, OMB Control No. 3235–0466]

Submission for OMB Review; Comment Request; Extension: Rule 103

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 103 of Regulation M (17 CFR 242.103), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 103 permits passive market-making in Nasdaq securities during a distribution. A distribution participant that seeks use of this exception would be required to disclose to third parties its intention to engage in passive market making.

There are approximately 428 respondents per year that require an aggregate total of approximately 428 hours to comply with this rule. Each respondent makes an estimated 1 response annually. Each response takes approximately 1 hour to complete. Thus, the total hour burden per year is approximately 428 hours. The total estimated internal cost of compliance for the respondents is approximately $34,668 per year, resulting in an estimated internal cost of compliance per response of approximately $81 (*i.e.,* $34,668/428 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by May 22, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: April 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08423 Filed 4–20–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–698, OMB Control No. 3235–0655]

Proposed Collection; Comment Request; Extension: Regulation 14N and Schedule 14N

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule 14N (17 CFR 240.14n–101) requires the filing of certain information with the Commission by shareholders who submit a nominee or nominees for director pursuant to applicable state law, or a company's governing documents. Schedule 14N provides notice to the company of the shareholder's intent to have the company include the shareholder's or shareholder groups' nominee or nominees for director in the company's proxy materials. This information is intended to assist shareholders in making an informed voting decision with regards to any nominee or nominees put forth by a nominating shareholder or group, by allowing shareholders to gauge the nominating shareholder's interest in the company, longevity of ownership, and intent with regard to continued ownership in the company. We estimate that Schedule 14N takes approximately 40 hours per response and will be filed by approximately 10 issuers annually. In addition, we estimate that 75% of the 40 hours per response (30 hours per response) is prepared by the issuer for an annual reporting burden of 300 hours (30 hours per response × 10 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by June 20, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08426 Filed 4–20–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–408, OMB Control No. 3235–0464]

Submission for OMB Review; Comment Request; Extension: Rule 101

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 101 of Regulation M (17 CFR 242.101), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 101 prohibits distribution participants from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by this rule may seek to use several applicable exceptions such as a calculation of the average daily trading volume of the securities in distribution, the maintenance of policies regarding information barriers between their affiliates, and the maintenance of a written policy regarding general compliance with Regulation M for de minimus transactions.

There are approximately 2,002 respondents per year that require an aggregate total of approximately 27,901 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes on average approximately 13.936563 hours to complete. Thus, the total hour burden per year is approximately 27,901 hours. The total estimated internal compliance cost for the respondents is approximately $2,259,981 resulting in an internal cost of compliance for each respondent per response of approximately $1,128.86 (*i.e.,* $2,259,981/2,002 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by May 22, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: April 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08422 Filed 4–20–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–808, OMB Control No. 3235–0762]

Submission for OMB Review; Comment Request: Extension: Rule 15*1*–1

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15*1*–1 (17 CFR 240.15*1*–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15*1*–1 established a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer (together, ''broker-dealers'') when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer (''Regulation Best Interest''). Regulation Best Interest requires broker-dealers, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, to act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker-dealer or natural person who is an associated person making the recommendation ahead of the interest of the retail customer.

The information that must be collected pursuant to Regulation Best Interest is intended to: (1) improve

disclosure about the scope and terms of the broker-dealer's relationship with the retail customer, which would foster retail customers' understanding of their relationship with a broker-dealer; (2) enhance the quality of recommendations provided by establishing an express best interest obligation under the federal securities laws; (3) enhance the disclosure of a broker-dealer's conflicts of interest; and (4) establish obligations that require mitigation, and not just disclosure, of conflicts of interest arising from financial incentives associated with broker-dealer recommendations. The information will therefore help establish a framework that protects investors and promotes efficiency, competition, and capital formation.

There are approximately 2,683 respondents that must comply with Rule 15*1*–1. The aggregate annual burden for all respondents is estimated to be 2,568,434 hours, or 957 hours per respondent (2,568,434 hours/2,683 respondents). Under Rule 15*1*–1, respondents will also incur cost burdens. The aggregate annual cost burden for all respondents is estimated to be $12,085,860, or $4,505 per respondent ($12,085,860/2,681 respondents).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by May 22, 2023 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: April 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08420 Filed 4–20–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–797 OMB Control No. 3235–0748]

Submission for OMB Review; Comment Request: Extension; ''Ombudsman Matter Management System Submission Form''

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of the Investor Advocate, 100 F Street NE, Washington, DC 20549–3720

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request to approve the collection of information discussed below.

Each year the Commission's Office of the Investor Advocate, Office of the Ombudsman (''Ombudsman'') receives over a thousand contacts from investors who have complaints or questions about the SEC or any of the self-regulatory organizations that it oversees. To make it easier for the public to contact the Ombudsman, the Ombudsman (''Ombudsman'') created an electronic form (Ombudsman Matter Management System Submission Form) that provides drop down options to choose from in order to categorize the investor's complaint or question, and may also provide the investor with automated information about their issue. The Ombudsman Matter Management System (OMMS) Submission Form asks investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, actions they have taken. Use of the Ombudsman Matter Management System Submission Form is voluntary. Absent the forms, the public still has several ways to contact the Ombudsman, including telephone, letters, and email. Investors can access the Ombudsman Matter Management System Submission Form through the Ombudsman web page at the web address *https://www.sec.gov/ombudsman* or directly at the web address *https://omms.sec.gov.*

The dual purpose of the Ombudsman Matter Management System Submission Form is to make it easier for the public to contact the agency with complaints, questions, tips, or other feedback and to streamline the workflow of Ombudsman staff that record, process, and respond to investor contacts. Investors who submit complaints, ask questions, or provide tips do so voluntarily. Although the Ombudsman Matter Management System Submission Form provides a structured format for incoming investor correspondence, the Commission does not require that investors use any particular form or format when contacting the Ombudsman. Investors who choose not to use the Ombudsman Matter Management System Submission Form will receive the same level of service as those who do.

The Ombudsman receives approximately 1,500 contacts each year through the Ombudsman Matter Management System Submission Form. The Ombudsman uses the information that investors supply on the Ombudsman Matter Management System Submission Form to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, referring matters to enforcement or examinations for potential investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends.

The staff of the Commission estimates that the total reporting burden for using the Ombudsman Matter Management System Submission Form is 750 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 1,500 respondents × 30 minutes = 750 burden hours.

Members of the public should be aware that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number is displayed. Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov.* General comments regarding the above information should be directed to the following persons within 30 days of publication of this notice by May 22, 2023 to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John R. Pezzullo, 100 F St. NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.* Comments must be

submitted to OMB within 30 days of this notice.

Dated: April 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08419 Filed 4–20–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–456, OMB Control No. 3235–0515]

Proposed Collection; Comment Request; Extension: Schedule TO

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Schedule TO (17 CFR 240.14d-100) must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under Section 12 of the Exchange Act (15 U.S.C. 78l) (which offer, if consummated, would cause that person to own over 5% of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. Schedule TO takes approximately 44.75 hours per response and is filed by approximately 1,378 issuers annually. We estimate that 50% of the 44.75 hours per response (22.375 hours) is prepared by the issuer for an annual reporting burden of 30,834 hours (22.375 hours per response × 1,378 responses).

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by June 20, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 18, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08495 Filed 4–20–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–189, OMB Control No. 3235–0201]

Submission for OMB Review; Comment Request; Extension: Rule 17a–2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 17a–2 (17 CFR 240.17a–2), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17a–2 requires underwriters to maintain information regarding stabilizing activities conducted in accordance with Rule 104 of Regulation M. The collections of information under Regulation M and Rule 17a–2 are necessary for covered persons to obtain certain benefits or to comply with certain requirements. The collections of information are necessary to provide the Commission with information regarding syndicate covering transactions and penalty bids. The Commission may review this information during periodic examinations or with respect to investigations. Except for the information required to be kept under Rule 104(i) (17 CFR 242.104(i)) and Rule 17a–2(c), none of the information required to be collected or disclosed for PRA purposes will be kept confidential. The recordkeeping requirement of Rule 17a–2 requires the information be maintained in a separate file, or in a separately retrievable format, for a period of three years, the first two years in an easily accessible place, consistent with the requirements of Exchange Act Rule 17a–4(f) (17 CFR 240.17a–4(f)).

There are approximately 1,211 respondents per year that require an aggregate total of approximately 6,055 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 5 hours to complete. Thus, the total hour burden per year is approximately 6,055 hours. The total internal compliance cost for the respondents is approximately $490,455 per year, resulting in an internal cost of compliance for each respondent per response of approximately $405 (*i.e.,* $490,455/1,211 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent by May 22, 2023 to (i) *www.reginfo.gov/public/do/PRAMain* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.*

Dated: April 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08421 Filed 4–20–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–323, OMB Control No. 3235–0362]

Proposed Collection; Comment Request; Extension: Form 5—Annual Statement of Beneficial Ownership

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Under Section 16(a) of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which registered pursuant to Section 12 of the Exchange Act, or who is a director or an officer of the issuer of such security (collectively ''reporting persons''), must file statements setting forth their security holdings in the issuer with the Commission. Form 5 (17 CFR 249.105) is an annual statement of beneficial ownership of securities. Approximately 5,939 reporting persons file Form 5 annually and we estimate that it takes approximately one hour to prepare the form for a total of 5,939 annual burden hours.

Written comments are invited on: (a) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by June 20, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 17, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08424 Filed 4–20–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97318; File No. SR–ICC–2023–004]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to Clearance of Additional Credit Default Swap Contracts

April 17, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] 15 U.S.C. 78s(b)(1) [2] and Rule 19b–4,[3] 17 CFR 240.19b–4, notice is hereby given that on April 3, 2023, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been primarily prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed change is for ICC to provide for the clearance of Standard Subordinated European Insurance Corporate Single Name CDS contracts (''STSEIC Contracts'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to adopt rules that will provide the basis for ICC to clear additional credit default swap contracts (''CDS''). Specifically, ICC proposes amending Chapter 26 [4] of the ICC Rules to add Subchapter 26S to provide for the clearance of STSEIC Contracts. ICC believes the addition of these contracts will benefit the market for CDS by providing market participants the benefits of clearing, including the reduction in counterparty risk, and safeguarding of margin assets pursuant to clearing house rules. The clearing of STSEIC Contracts will not require any changes to ICC's Risk Management Framework or other policies and procedures constituting rules within the meaning of the Securities Exchange Act of 1934 (''Act'').[5]

Rule Amendments

STSEIC Contracts have similar terms to Standard European Corporate Single Name CDS contracts (''STEC Contracts'') currently cleared by ICC and governed by Subchapter 26G of the ICC Rules. Accordingly, the proposed rules found in Subchapter 26S largely mirror the ICC Rules for STEC Contracts in Subchapter 26G, with certain modifications that reflect differences in terms and market conventions between STEC Contracts and STSEIC Contracts. STSEIC contracts will be denominated in Euro.

In new Subchapter 26S, Rule 26S–102 (Definitions) sets forth the definitions used for STSEIC Contracts. Except as noted below, the definitions are substantially the same as the definitions found in Subchapter 26G, other than the category of contract to be cleared. The definitions section in Subchapter 26S does not contain a definition analogous to ''Eligible STEC Sector'' that appears in Subchapter 26G as, unlike STEC Contracts, there are no further subsectors for STSEIC Contracts as these contracts are essentially already at a sub-sector level and therefore a

[1] 15 U.S.C. 78s(b)(1).

[2] *Id.*

[3] *Id.*

[4] Chapter 26 of the ICC Rules covers the CDS products cleared by ICC, with each subchapter of Chapter 26 defining the characteristics and additional Rules applicable to the various specific categories of CDS contracts cleared by ICC (*e.g.,* Standard European Corporate Single Names and Standard North American Corporate Single Names).

[5] 15 U.S.C. 78q–1.

definition for further sub-sectors is not necessary. Furthermore, Subchapter 26S does not contain several provisions on restructuring that are found in Subchapter 26G. The reason such provisions are not needed in Subchapter 26S is that the market convention for STSEIC Contracts (as set out in the ISDA Physical Settlement Matrix) is that Modified Modified Restructuring (aka ''M(M)R Restructuring'') does not apply. This differs from the STEC Contract category and therefore various provisions that relate to M(M)R Restructuring that are included in Subchapter 26G are not applicable for STSEIC Contracts and therefore are not included in proposed Subchapter 26S. In addition, Subchapter 26G includes several references to ''2003-Type CDS Contracts'' which are not included in proposed Subchapter 26S as it is not anticipated that any cleared STSEIC Contracts will reference the older 2003 ISDA Credit Derivatives Definitions and as a result those provision related to the 2003 ISDA Credit Derivatives Definitions have not been included. ICC Rules 26S–203 (Restrictions on Activity), 26S–206 (Notices Required of Participants with respect to STSEIC Contracts), 26S–303 (STSEIC Contract Adjustments), 26S–309 (Acceptance of STSEIC Contracts by ICE Clear Credit), 26S–315 (Terms of the Cleared STSEIC Contract, 26S–316 (Relevant Physical Settlement Matrix Updates), 26S–502 (Specified Actions), and 26S–616 (Contract Modifications) reflect or incorporate the basic contract specifications for STSEIC Contracts and are substantially the same as under Subchapter 26G of the ICC Rules. Under 26S–315(f) the Subordinated European Insurance Terms are deemed to apply to the STSEIC Contracts as such terms are part of the market-standard provisions that apply under the 2014 ISDA Credit Derivatives Definitions. Furthermore, 26S–616 is slightly different from the analogous provision under Subchapter 26G (*i.e.,* 26G–616) as the NTCE Supplement [6] referenced in Rule 26G–616(c) was adopted while ICC had open interest in STEC Contracts and therefore Rule 26G–616 was amended to incorporate the NTCE Supplement into then currently open STEC Contract positions.[7] For new cleared contracts such as STSEIC Contracts under Subchapter 26S, such specific reference to the NTCE Supplement is not necessary as such supplement is part of the 2014 ISDA Credit Derivatives Definitions and therefore will automatically apply to STSEIC Contracts under the current ISDA Physical Settlement Matrix.

(b) Statutory Basis

ICC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [8] and the regulations thereunder applicable to it, including the applicable standards under Rule 17Ad–22.[9] In particular, Section 17A(b)(3)(F) of the Act [10] requires that the rule change be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest. As described above, the STSEIC Contracts proposed for clearing are similar to contracts currently cleared by ICC and will be cleared pursuant to ICC's existing clearing arrangements and related financial safeguards, protections and risk management procedures. Clearing of the STSEIC Contracts will allow market participants an increased ability to manage risk and ensure the safeguarding of margin assets pursuant to ICC Rules. ICC believes that acceptance of the STSEIC Contracts, on the terms and conditions set out in the ICC Rules, is consistent with the prompt and accurate clearing and settlement of the contracts cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC or for which it is responsible, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[11]

Clearing of the STSEIC Contracts also will satisfy the relevant requirements of Rule 17Ad–22.[12] In particular, in terms of financial resources, ICC will apply its existing initial margin methodology to the clearing of the additional contracts. ICC believes this model will provide sufficient initial margin to cover its credit exposure to its clearing members commensurate with the risks and particular attributes from clearing such contracts, consistent with the requirements of Rule 17Ad–22(e)(6).[13] In addition, ICC believes its guaranty fund, under its existing methodology, will together with the required initial margin, provide sufficient financial resources to support the clearing of the additional contracts consistent with the requirements of Rule 17Ad–22(e)(4).[14] ICC also believes that its existing operational systems, policies, procedures and controls are sufficient for clearing the additional contracts, consistent with the requirements of Rule 17Ad–22(e)(17),[15] as the new contracts are substantially the same from an operational perspective as existing contracts and ICC will use existing settlement procedures and account structures for the new contracts. ICC determined to accept STSEIC Contracts for clearing in accordance with its governance process, which included review of the contracts and related risk management considerations by the ICC Risk Committee and approval by the Board. These governance arrangements are consistent with the requirements of Rule 17Ad–22(e)(2).[16]

(B) Clearing Agency's Statement on Burden on Competition

The STSEIC Contracts will be available to all ICC participants for clearing. The clearing of STSEIC Contracts by ICC does not preclude the offering of the STSEIC Contracts for clearing by other market participants. Accordingly, ICC does not believe that clearance of the STSEIC Contracts will have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act.[17]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

[6] The 2019 Narrowly Tailored Credit Event Supplement to the 2014 ISDA Credit Derivatives Definitions published by ISDA (the ''NTCE Supplement'').

[7] See SEC Release No. 34–87612 (December 2, 2019) (notice), 85 FR 3724 (January 22, 2020) (SR–ICC–2019–013).

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 240.17Ad–22.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] Id.

[12] 17 CFR 240.17Ad–22.

[13] 17 CFR 240.17Ad–22(e)(6), which requires covered clearing agency policies and procedurs to cover its credit exposures to its participants by establishing a risk-based margin system.

[14] 17 CFR 240.17Ad–22(e)(4), which requires covered clearing agency policies and procedures to effectively identify, measure, monitor and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes.

[15] 17 CFR 240.17Ad–22(e)(17), which requires covered clearing agency policies and procedures to manage its operational risks.

[16] 17 CFR 240.17Ad–22(e)(2), which requires covered clearing agency policies and procedures to provide for governance arrangments which, among other things, are clear and transparent and prioritize the safety and efficiency of the covered clearing agency.

[17] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[18] Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2023–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2023–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2023–004 and should be submitted on or before May 12, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–08410 Filed 4–20–23; 8:45 am]

BILLING CODE 8011–01–P

[18] *Id.*

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17881 and #17882; Indiana Disaster Number IN–00080]

Presidential Declaration of a Major Disaster for the State of Indiana

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–4704–DR), dated 04/15/2023.

Incident: Severe Storms, Straight-line Winds, and Tornadoes.

Incident Period: 03/31/2023 through 04/01/2023.

DATES: Issued on 04/15/2023.

Physical Loan Application Deadline Date: 06/14/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/15/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/15/2023, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Allen, Benton, Clinton, Grant, Howard, Johnson, Lake, Monroe, Morgan, Owen, Sullivan, White.

Contiguous Counties (Economic Injury Loans Only):

Indiana: Adams, Bartholomew, Blackford, Boone, Brown, Carroll, Cass, Clay, De Kalb, Delaware, Greene, Hamilton, Hendricks, Huntington, Jackson, Jasper, Knox, Lawrence, Madison, Marion, Miami, Montgomery, Newton, Noble, Porter, Pulaski, Putnam, Shelby, Tippecanoe, Tipton, Vigo, Wabash, Warren, Wells, Whitley.

Illinois: Clark, Cook, Crawford, Iroquois, Kankakee, Vermilion, Will.

Ohio: Defiance, Paulding, Van Wert.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.750
Homeowners without Credit Available Elsewhere	2.375
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17881 C and for economic injury is 17882 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–08454 Filed 4–20–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17842 and #17843; California Disaster Number CA–00376]

Presidential Declaration Amendment of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of California (FEMA–4699–DR), dated 04/03/2023.

Incident: Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/21/2023 and continuing.

DATES: Issued on 04/14/2023.

Physical Loan Application Deadline Date: 06/02/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of California, dated 04/03/2023, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): San Bernardino.

Contiguous Counties (Economic Injury Loans Only):

California: Orange, Riverside.

Arizona: La Paz, Mohave.

Nevada: Clark.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–08455 Filed 4–20–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17852 and #17853; California Disaster Number CA–00380]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–4699–DR), dated 04/03/2023.

Incident: Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/21/2023 and continuing.

DATES: Issued on 04/14/2023.

Physical Loan Application Deadline Date: 06/02/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of California, dated 04/03/2023, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Alpine, Fresno, Kern, Kings, Mariposa, Merced, San Benito, San Bernardino, Sierra, Trinity, Tuolumne.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–08457 Filed 4–20–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17883 and #17884; Arkansas Disaster Number AR–00130]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Arkansas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arkansas (FEMA–4698–DR), dated 04/13/2023.

Incident: Severe Storms and Tornadoes.

Incident Period: 03/31/2023.

DATES: Issued on 04/13/2023.

Physical Loan Application Deadline Date: 06/12/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/16/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/13/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cross, Lonoke, Pulaski.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17883 C and for economic injury is 17884 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–08452 Filed 4–20–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2022–0027]

Notice and Request for Comment on FHWA's Review of Its General Applicability Waiver of Buy America Requirements for Manufactured Products

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; extension and reopening of comment period.

SUMMARY: The FHWA is extending the comment period for a request for comments on its existing general applicability waiver for manufactured products under FHWA's Buy America waiver authorities, which was published on March 17, 2023, in the **Federal Register**. The comment period is currently set to close on April 17, 2023. The extension is based on concern expressed by a number of stakeholders that the original comment period was inadequate to meaningfully review the request for comments, analyze the impact of any possible changes to the existing general applicability waiver for manufactured products, gather information, and provide comprehensive comments. The FHWA recognizes that others interested in commenting may have similar concerns and agrees that the comment period should be extended. Therefore, the comment period is reopened and the closing date for comments is May 22, 2023, which will provide stakeholders and others interested in commenting additional time to submit responses to the docket.

DATES: Comments must be received on or before May 22, 2023. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments to the Federal eRulemaking Portal at *www.regulations.gov,* Docket: FHWA–2022–0027, and follow the online instructions for submitting comments.

Instructions: You must include the agency name and docket number at the beginning of your comments. Except as described below under the heading ''Confidential Business Information,'' all submissions received, including any personal information provided, will be posted without change or alteration to *www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202–366–1562, or via email at *Brian.Hogge@dot.gov.* For legal questions, please contact Mr. David Serody, FHWA Office of the Chief Counsel, 202–366–4241, or via email at *David.Serody@dot.gov.* Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of this notice, all comments received on this notice, and all background material may be viewed online at *www.regulations.gov* using the docket number listed above. Electronic retrieval assistance and guidelines are also available at *www.regulations.gov.* An electronic copy of this document also may be downloaded from the Office of the Federal Register's website at: *www.FederalRegister.gov* and the Government Publishing Office's website at: *www.GovInfo.gov.*

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. You may ask FHWA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as ''Confidential''; (2) send FHWA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. The FHWA will protect confidential information complying with these requirements to the extent required under applicable law. If DOT receives a FOIA request for the information that the applicant has marked in accordance with this notice, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.29. Only information that is marked in accordance with this notice and ultimately determined to be exempt from disclosure under FOIA and § 7.29 will not be released to a requester or placed in the public docket of this notice. Submissions containing CBI should be sent to: Mr. Brian Hogge, FHWA, 1200 New Jersey Avenue SE, HICP–20, Washington, DC 20590. Any comment submissions that FHWA receives that are not specifically designated as CBI will be placed in the public docket for this matter.

Background

On November 15, 2021, the President signed into law the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), (Pub. L. 117–58). The BIL includes the Build America, Buy America Act (''BABA''). BIL, div. G sections 70901–27. Section 70914(d) of BABA requires Federal Agencies to review existing general applicability waivers of Buy America requirements by publishing in the **Federal Register** a notice that: (i) describes the justification for a general applicability waiver; and (ii) requests public comments for a period of not less than 30 days on the continued need for the general applicability waiver. Following the initial notice and review and consideration of comments received, the Agency must publish in the **Federal Register** a determination on whether to continue or discontinue the general applicability waiver. BABA section 70914(d).

On March 17, 2023, at 88 FR 16517, in accordance with section 70194(d) of BABA, FHWA published in the **Federal Register** a notice of a review of its public interest waiver of general applicability of FHWA's Buy America requirement for manufactured products, known as the Manufactured Products General Waiver, and requested comments. The notice set a closing date of April 17, 2023, for the comment period. In a comment submitted in response to that notice, a coalition of stakeholders has expressed concern that this closing date does not provide sufficient time to review and provide comprehensive comments and

requested a 90-day extension of the comment period.[1]

The FHWA recognizes that others interested in commenting may have similar concerns and agrees that the comment period should be extended. The FHWA, however, does not agree that the comment period should be extended for such a long duration and notes that many stakeholders have already provided substantive, responsive comments. The BABA is meant to strengthen domestic manufacturing by expanding the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. Consistent with this goal, BABA section 70914(d) also requires Agencies to review existing waivers of general applicability that effectively limit the extent to which Buy America preferences are applied. To carry out this purpose, FHWA believes it necessary to proceed with the review of comments submitted on the review of the Manufactured Products General Waiver as expeditiously as possible, while also providing sufficient time for all commenters to provide information on the issues raised in the March 17 notice. While FHWA agrees with the coalition of stakeholders that more than 30 days is needed to achieve these dual purposes, FHWA believes that extending the comment period by 90 days would unnecessarily delay FHWA's ability to review comments and publish a determination on whether to continue or discontinue the Manufactured Products General Waiver under BABA section 70914(d)(2)(B) in a timely manner. For that reason, FHWA is reopening and extending the comment period by 30 days for these organizations and others to submit comments. The closing date for the comment period is May 22, 2023.

Andrew Rogers,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 2023–08446 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–22–P

[1] This coalition was comprised of the Associated General Contractors of America, American Association of State Highway and Transportation Officials, American Concrete Pipe Association, American Council of Engineering Companies, American Highway Users Alliance, American Road & Transportation Builders Association, American Society of Civil Engineers, American Traffic Safety Services Association, Associated Equipment Distributors, National Asphalt Pavement Association, National Association of Surety Bond Producers, National Ready Mixed Concrete Association, National Stone, Sand & Gravel Association, National Utility Contractors Association, Portland Cement Association, Power and Communication Contractors Association, Surety & Fidelity Association of America, U.S. Chamber of Commerce, and Water and Sewer Distributors of America. Comment from Coalition of Stakeholders (Mar. 31, 2022), *https://www.regulations.gov/comment/FHWA-2022-0027-0012.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0174]

Agency Information Collection Activities; Approval of a New Information Collection Request: Human Factors Considerations in Commercial Motor Vehicle Automated Driving Systems and Advanced Driver Assistance Systems

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This notice invites comments on a proposed information collection titled *Human Factors Considerations in Commercial Motor Vehicle Automated Driving Systems and Advanced Driver Assistance Systems.* It is a driving simulator study with a series of questionnaires that will evaluate how commercial motor vehicle (CMV) drivers engage in CMVs equipped with SAE International Level 2 (L2) advanced driver assistance systems (ADAS) and Level 3 (L3) automated driving systems (ADS). Approximately 100 CMV drivers will participate in the study. The study will examine the effect of non-driving secondary task engagement, transfer of control, and training on driver behavior in CMVs equipped with ADAS and ADS.

DATES: Comments on this notice must be received on or before May 22, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Theresa Hallquist, Office of Research and Registration, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–1064; *theresa.hallquist@dot.gov.*

SUPPLEMENTARY INFORMATION:

Title: Human Factors in CMVs Equipped with ADS and ADAS.

OMB Control Number: 2126–00XX.

Type of Request: New ICR.

Respondents: Commercial motor vehicle drivers.

Estimated Number of Respondents: 100.

Estimated Time per Response: 4 hours.

Expiration Date: This is a new ICR.

Frequency of Response: Two responses.

Estimated Total Annual Burden: 476 hours.

Background

Higher levels of ADAS and lower levels of ADS present an environment that is ripe for overreliance. An L2 vehicle offers longitudinal and lateral support to the driver; however, the driver is still responsible for driving at all times. An L2 vehicle is an example of higher levels of ADAS. At this level, engaging in non-driving secondary tasks can be highly detrimental to driving performance as the driver may not recognize and respond to hazards timely or appropriately. In an L3 vehicle, the role of distraction is blurred. L3 is the lowest level considered to be ADS. The driver takes on a more supervisory role and is in full control of the vehicle in a limited number of situations. When an L3 vehicle alerts the driver that a takeover is required, the driver needs to have situational awareness to resume full control of the vehicle. Engagement in non-driving secondary tasks may prevent the driver from maintaining situational awareness of the driving environment.

A recently completed study by FMCSA on research involving ADSs in CMVs found a lack of research related to ADS-equipped CMVs. To date, most commercial ADSs on U.S. roadways are in passenger vehicles, and CMV ADSs have only recently begun being implemented in real-world operations. Therefore, FMCSA needs more data on ADS-equipped CMVs to understand driver behavior and policy implications.

The purpose for obtaining data in this study is to evaluate driver readiness to assume control in SAE L2 ADAS and L3 ADS-equipped CMVs and develop and test a CMV driver distraction training program designed to improve driver readiness. Specifically, there are three

primary objectives for the data collection:

(1) determine the effect of distraction on CMV drivers of L2 vehicles;

(2) determine the effect of transfer of control on CMV drivers in L3 vehicles; and

(3) develop and evaluate a training program that is designed to decrease the levels of distraction that were identified in CMV drivers in L2 vehicles and designed to improve the problems with the transfer of control that were identified in L3 vehicles.

Answers to these research questions will provide insight into the human factors associated with semi-automated CMVs. Moreover, these findings will inform training materials to educate drivers on distraction and the functionality of ADAS and ADS as well as policy pertaining to the implications of ADASs and ADSs in CMVs.

The study includes data collection from a series of questionnaires and a driving simulator-focused experiment. The collected survey data will support the simulator experiment data. The survey data will be used in two ways: in the assessment of driving performance data as covariates in the model (to control for certain demographic variables, such as age, gender, and experience) and to answer a research question on the relationship between driver characteristics and driver readiness and performance. Data on driver readiness and performance will be collected from the simulator experiment. Eligible drivers will hold a valid commercial driver's license, currently drive a CMV, be 21 years of age or older, and pass the motion sickness history screening questionnaire.

Data will be collected over two study sessions. The first study session will collect data on the effects of non-driving secondary tasks and readiness to resume control of an L2- or L3-equipped CMV. The second study session will assess the effectiveness of driver training to improve safety while operating an L2 or L3 CMV. Questionnaire data will be collected prior to the simulator study, during the simulator study, and after the simulator study. In addition, participants will complete questionnaires about the training in the second study session. All questionnaires will be preloaded in an app format for drivers to complete on a tablet.

We anticipate 100 participants in total for the driving simulator study. Fifty drivers will participate in the L2 study sessions, and the other 50 drivers will participate in the L3 study sessions. During consent, each participant will agree to participate in both the L2/L3 simulator study session and the training study session. For a participant who chooses not to continue, a new driver will be recruited to fill their position. These new participants will not have data from the L2/L3 study but will need to complete a new consent form, pre-/post-study questionnaires, and the training questionnaire. Each study session will be completed in 4 hours, resulting in a total of up to 8 hours of participation for drivers that complete both study sessions.

Multiple analyses will be used, including an assessment of driver distraction and its effects on driver readiness and driving performance. In the L2 and L3 studies, general linear mixed models (GLMMs) will be used to answer the research questions. In the transportation safety field, GLMMs are often used to analyze driver behavior and assess relationships between driving scenarios and behaviors. To evaluate the effectiveness of the training program, linear mixed models will be used with random intercepts. Driver random intercepts will account for participants' correlated behaviors and expectations in the L2 or L3 system before and after training.

FMCSA published the 60-day **Federal Register** notice on September 21, 2022, and the comment period closed on November 21, 2022 (87 FR 57748). A total of 93 comments were received from the public. These comments revolved around nine issues: general safety concerns with CMVADS, concern for job loss due to ADS-equipped CMVs, concerns related to the operation of ADS within specific operational design domains, concerns with specific ADS and/or ADAS, the failure of ADS sensors, the security of ADS-equipped CMVs, driver inattention/distraction when operating an ADS, data collection efforts, and support for the study. Responses to these issues are below. Many comments touched on multiple issues; however, the comments below are organized based on the primary feedback provided.

General Safety Concerns With ADS-Equipped CMVS

Fifty percent of the comments received expressed general safety concerns related to ADS-equipped CMVs. FMCSA is actively engaged in many research and administrative activities to help improve the safety of CMV drivers and the general public, including research on ADS. There are many research questions that need to be answered before ADS-equipped CMVs are deployed at scale. Some of these research questions are focused on the ADS technology itself to ensure that the ADS technology functions as intended and incorporates the appropriate redundant failsafe systems. However, other research questions are focused on the human factors related to how individuals within the CMV industry will interact with ADS-equipped CMVs.

Crashes involving ADAS illustrate why research focused on human factors is critical prior to full-scale deployment of ADS. Many of the incidents involve a mismatch between driver expectations of the technology and the driver's true role and responsibility to monitor vehicle features. This study is focused on L2 and L3-equipped CMVs. The systems included in this study would require a driver inside the vehicle who is ready to resume control of the vehicle when needed or requested (*e.g.,* during icy conditions).

Results from this study will be used to develop and evaluate a training program designed to improve drivers' understanding and expectation of ADS. This training program will also attempt to improve drivers' attention maintenance and hazard anticipation while operating L2 and L3 vehicles. Although FMCSA believes this is a critical research study to understand how driver inattention may affect performance of L2 and L3 CMVs, it is only one research study of many that are needed to ensure the safety of drivers on the roadways.

Concerns for Loss of Jobs Due to ADS-Equipped CMVS

Ten comments from the public focused on the potential loss of jobs as a result of ADS-equipped CMVs. The trucking industry employs millions of individuals in the U.S. who are vital to the U.S. economy. Additionally, there are millions of other individuals who work in roles that support the transportation industry (*e.g.,* gas stations, truck stops, maintenance facilities, etc.). Better pay for drivers, effective training, safe equipment, and improved quality of life for drivers are important factors for retaining safe drivers within the industry.

ADAS and ADS offer possible solutions that help drivers maintain a better quality of life. For example, they may offer improved health through crash reduction and allow more home time through more regional operations for drivers who so desire. As mentioned above, this study is focused on L2 and L3 ADS-equipped CMVs. Both systems under investigation in this study would require a driver to be in the truck at all times and ready to resume control of the vehicle when requested. Thus, the technologies investigated in this study would not result in driver job loss.

Concerns for ADS in Specific Operational Domains

Seven comments provided by the public focused on concerns related to ADS-equipped CMVs operating outside of their intended operational design domain. Each ADS is designed to operate within specific conditions. These conditions provide parameters for the safe operation of ADS on the road. Before widespread deployment of ADS, more development, testing, and verification of ADS-equipped CMVs is needed to understand safe parameters and before they can operate in all conditions or anticipate and respond to all possible infrequent events.

As mentioned above, the safety technologies being investigated require a driver inside the vehicle at all times who could assume control of the CMV if conditions dictate. Drivers operating an L2 or L3-equipped CMV must be ready to assume control in these situations. These situations demonstrate why it is important to research driver inattention and vigilance of the driver when operating L2 and L3 vehicles. This research will provide information to ensure drivers are capable and safe to assume control of the CMV when needed through the development and evaluation of a training program to educate drivers on ADS capabilities and highlight the importance of maintaining attention while operating L2 and L3 vehicles.

Concerns With Specific ADAS/ADS

Six comments expressed concerns related to a specific advanced driver assistance feature or a particular ADS. These comments illustrate how additional research and development are needed for many of the features that will support ADS in CMVs. Although the technology to support ADS (*i.e.,* automatic emergency braking) has improved, there are still areas in need of improvement prior to the deployment of ADS-equipped CMVs. One of the objectives of this study is to better understand the effect of driver inattention while operating a CMV equipped with these support technologies. Ensuring drivers of L2 vehicles maintain attention to the road is important so that the drivers can anticipate hazards and potential scenarios where the L2 features may not operate as intended. Similarly, research to study inattention while operating an L3 vehicle is needed to determine what training and education will help drivers prepare to resume control when requested. This research, conducted in a simulator, will help the industry better understand how drivers of L2 and L3 vehicles can be prepared to take over control when necessary to ensure the safe operation of the CMV and the safety of the general public.

Concerns Related to Sensor Failure

Twelve comments primarily discussed concerns related to the failure of ADS sensors. Drivers' concerns related to the importance of properly maintained and functioning sensors are valid. Sensors do fail and/or become dirty if covered in debris, making them inoperable. It is critical for ADS to have redundant sensors or a backup alternative sensor system in case of failure. Research on the functionality of the technologies and sensors is ongoing. However, human factors-focused research is also necessary to ensure the safety of L2 and L3 vehicles. The technologies researched in this study require a driver to be in the vehicle and ready to take over control when needed or alerted. This study will examine how driver inattention affects a driver's ability to successfully respond to or anticipate hazards or scenarios that may require human control of the vehicle. This research is critical to help in-vehicle drivers be prepared when a sensor does fail or if the technology does not anticipate a hazard appropriately.

Concerns Related to the Security of ADS

Two comments focused on securing ADS against threats. The security of ADS-equipped CMVs is of incredible importance. Research and efforts related to the security of the vehicles is needed. However, this is a separate area of research and development and should not detract from the importance of human-factors research. As mentioned above, the purpose of this study is to ensure in-vehicle drivers are capable and ready to respond to unexpected hazards, scenarios, and requests to take over control of the vehicle when needed.

Concerns That Inattention/Distraction Will Increase With ADAS and ADS

Five comments discussed concerns related to potential increases in driver distraction, inattention, and reduced vigilance with the use of crash mitigation technologies. There is a need for research focused on driver inattention while operating CMVs equipped with ADAS and ADS. More data are needed to understand the prevalence of inattention when using, and drivers' overreliance on, crash mitigation technologies. This study is designed to gather data on these concerns in a safe environment without putting the CMV driver and the general public at risk. Results from this study will be used to develop training materials and information that may reduce this risk.

Concerns With the Data Collection Efforts

One comment focused on this study's proposed data collection methodology. As mentioned in the **Federal Register** notice, each study session will last approximately 4 hours. Although driver fatigue is an important area of research, this study is focused on driver distraction. However, driver fatigue may be observed in the study and will be identified and documented via eye tracking technologies.

Power analyses were performed to approximate the number of participants needed to find statistically significant results (if present). The sample included in this study was based on this power analysis with additional participants to account for attrition. However, the sample is a convenience sample, and there are no attempts to say the sample is representative of the U.S. CMV industry. Demographic information (*e.g.,* gender, age, health, etc.) will be collected and may be used to help control for potential confounding or extraneous variables during the statistical analyses.

Support for the Study

Three comments provided support for the study and provided additional insights based on recent investigations or research. Additional comments expressed the importance of focusing research on higher levels of ADS (*i.e.,* L4 or L5). Although FMCSA agrees much more research and data are needed on more advanced ADS, some original equipment manufacturers and developers of L2 and L3 vehicles are deploying vehicles with lower levels of driver assistance or automation. For example, L2 CMVs are available for purchase now. Research is needed to understand how inattention affects performance in vehicles with these levels of ADS and to ensure the safety of the CMV driver and the general public.

FMCSA agrees that distinguishing between features of L2 and L3 vehicles is important. This study focuses on both advanced driver assistance features (via L2 vehicles) and the lowest level of ADS (via L3 vehicles). Additional distinctions are provided in the supporting documentation, and FMCSA will ensure that distinctions between functionalities are included in the discussion of the results. To help improve this clarity, FMCSA proposes

to revise the study title to include ADAS (in reference to the L2 sub study).

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 performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2023–08500 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0030]

Massachusetts Bay Transportation Authority's Request To Amend Its 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 April 7, 2023, the Massachusetts Bay Transportation Authority (MBTA) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system in order to support the implementation of PTC on its commuter rail network. On MBTA's North Side, the PTC System in the area is being reconfigured and must be taken out of service during the recommissioning of Automatic Train Control (ATC) and the subsequent recommissioning of MBTA's Advanced Civil Speed Enforcement System II (ACSES II). FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTC system.

DATES: FRA will consider comments received by May 11, 2023. 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–2010–0030. 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 PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or 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 and train control system. Accordingly, this notice informs the public that, on April 7, 2023, MBTA submitted an RFA to its ACSES II system, which seeks FRA's approval to install Construction Zone (CZ) Transponders on MBTA's Western Route Main Line (WRML) segment between June and December 2023. MBTA state that the installation of the CZs is required to implement ATC and to reconfigure and retest PTC on MBTA's WRML. The CZs will result in the suspension of portions of the PTC system on these lines. During this time there will be no revenue passenger operations until the ATC system is placed into operation. Freight and non-revenue passenger operations will be conducted under NORAC rule 241 that limits trains to Restricted Speed. Once the ATC system is in operation, the ATC system along with the operating rules will govern train operations until the test and commissioning of the reconfigured ACSES system is complete. The RFA is available in Docket No. FRA–2010–0030.

Interested parties are invited to comment on MBTA's RFA to its PTC system by submitting written comments or data. During FRA's review of this railroad'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 PTC system 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 *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. 2023–08456 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2002–12409]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated March 15, 2023, Port Authority Trans-Hudson Corporation (PATH) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 238 (Passenger Equipment Safety

Standards). The relevant Docket Number is FRA–2002–12409.

Specifically, PATH requests to extend its relief from §§ 238.305(c)(10) and (d), *Interior calendar day mechanical inspection of passenger cars,* and 238.317(a)(1), *Movement of passenger equipment with other than power brake defects,* for its fleet of passenger vehicles. PATH requests continued relief from the requirement that a car must be removed from service on the day following its calendar day interior mechanical inspection. PATH seeks permission for a car to remain in service up to eight calendar days following notification, so the car can be brought to the PATH running repair or main repair facility. In support of this request, PATH states that ''due to the confined geography of the system and limited track storage areas, cutting cars from consists . . . cannot be done during the workday without having significant adverse effect upon passenger service.'' Further, PATH requests continued relief from the requirement to perform a Class II brake test during specific periods of time at terminal locations. PATH explains that terminal dwell times are less than five minutes and ''the [c]onductor does not have adequate time to remain at the rear of the train while the [e]ngineer changes operating position to perform the [b]rake [t]est, and then walk forward to the conductor operating position between the first and second car.'' In support of its request, PATH states that ''the typical train will undergo a Class II test approximately ten times every day.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by June 20, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–08496 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0033]

Petition for Modification of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 15, 2023, BNSF Railway Company (BNSF) petitioned the Federal Railroad Administration (FRA) for an amendment of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 215 (Railroad Freight Car Safety Standards) and part 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices). The relevant Docket Number is FRA–2020–0033.

Specifically, BNSF requests to modify and clarify two of the conditions (conditions 2 and 12) on the relief granted by FRA's letter dated September 11, 2020.[1] BNSF proposes to modify condition 2 by providing an additional report to FRA ''on the prior week[']s list of actual trains that were operated under the waiver.'' BNSF states that this additional report would ''provide better clarity for both FRA and Labor as they look to audit BNSF processes against this waiver.'' BNSF seeks to amend condition 12 by changing the phrase ''originating terminal'' to ''the combination location,'' specifying that until trains are combined, they are ''only potential waiver candidates.'' In support of its request, BNSF states that the modifications would support ''transparencey (sic) in the waiver process and continuous improvement'' and ''remove any ambiguity or lack of process understanding.''

[1] *https://www.regulations.gov/document/FRA-2020-0033-0005.*

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by June 20, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–08497 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–09]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before June 20, 2023.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2023–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0500) in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

This ICR responds to the information collection mandate in Section 22421(b) of the Infrastructure Investment and Jobs Act (IIJA) and also provides routine updates to 49 CFR part 225's overall information collection request renewal.

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal statutes and regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Accident/Incident Reporting and Recordkeeping.

OMB Control Number: 2130–0500.

Abstract: The railroad accident/incident reporting regulations in 49 CFR part 225 require railroads to submit reports summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on railroad property. As the reporting requirements and the information needed regarding each category of accident/incident are unique, a different form is used for each category.

In response to the mandate in IIJA Section 22421,[1] FRA intends to utilize Form FRA F 6180.54 Special Study Blocks 49a and 49b to collect the following information for a projected five-year period: (1) the length of the involved trains, in feet, and (2) the number of crew members who were aboard a controlling locomotive involved in an accident at the time of such accident. This modification produces a minimal additional burden with respect to what is already being reported, as FRA estimates that the utilization of the Special Study Blocks will require an additional 2 minutes to complete, for a total average burden time of approximately 2 hours and 2 minutes per form, adding an additional 57 hours to the overall collection request.

In this 60-day notice, FRA has made multiple adjustments to its estimated paperwork burden for the entire part 225 collection request, resulting in a reduction of 5,563 hours, from 35,846 hours in the current inventory, to 30,283 hours in the requested inventory. The primary reason for the reduction in the estimated paperwork burden is the expected decrease in the number of submissions. Specifically, under § 225.19(d), FRA expects submissions will decrease significantly from 11,636 hours to 7,040 hours due to a reduction in the number of injuries reported in the last two years. There is no change in the method of collection; this is a routine update for this 3-year ICR renewal period.

Type of Request: Revision of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.54; .55; .55a; .56; .57; .78; .81; .97; .98; .107; .150.

Respondent Universe: 784 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

[1] Specifically, IIJA section 22421(b) requires FRA to update Special Study Block 49 on Form FRA F 6180.54, for a period of five years, to collect information on: (1) the number of cars and length of trains involved in an accident/incident; and (2) the number of crew members who were aboard a controlling locomotive involved in an accident at the time of such accident. Railroads are already required to report the number of cars in the consist of a train involved in an accident on Form FRA F 6180.54, Field 35.

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) [2]
225.6(a)—Consolidated reporting—Request to FRA by parent corporation to treat its commonly controlled carriers as a single railroad carrier for purposes of this part.	784 railroads	0.33 requests	40.00 hours	13.20	$1,028.41
—(b) Written agreement by parent corporation with FRA on specific subsidiaries included in its railroad system.	The burden for this requirement is included in § 225.6(a).				
—(c) Notification by parent corporation regarding any change in the subsidiaries making up its railroad system and amended written agreement with FRA.	The burden for this requirement is included in § 225.6(a).				
225.9—Telephonic reports of certain accidents/incidents and other events.	784 railroads	2,589.00 phone reports	15.00 minutes	647.25	50,427.25
225.11—Reporting of accidents/incidents—Form FRA F 6180.54 *(IIJA created an additional burden of 2 minutes to what is already being reported.).*	784 railroads	1,699.00 forms	2 hours + 2 minutes	3,454.63	269,150.22
225.12(a)—Rail equipment accident/incident reports alleging human factor as cause—Form FRA F 6180.81.	784 railroads	732.00 forms	15.00 minutes	183.00	14,257.53
—(b) Part I Form FRA F 6180.78 (Notices)	784 railroads	800 notices + 800 notice copies + 3,200 copies + 10 copies.	10 minutes + 3 minutes	333.83	26,008.70
—(c) Joint operations	784 railroads	73.00 reports	20.00 minutes	24.00	1,869.84
—(d) Late identification	784 railroads	20 attachments + 20 notices.	10.00 minutes	6.67	519.66
—(g) Employee statement supplementing railroad accident report (Part II Form FRA 6180.78).	Railroad employees	60.00 statements	1.50 hours	90.00	7,011.90
—(g)(3) Employee confidential letter	Railroad employees	5.00 letters	2.00 hours	10.00	779.10
225.13(A)—Late reports—RR discovery of improperly omitted report of accident/incident.	784 railroads	50.00 late reports	2.00 hours	100.00	7,791.00
—(B) RR late/amended report of accident/incident based on employee statement supplementing RR accident report.	784 railroads	20 amended reports + 30 copies.	1 hour + 3 minutes	21.50	1,675.07
225.18(a)—RR narrative report of possible alcohol/drug involvement in accident/incident.	784 railroads	12.00 reports	15.00 minutes	3.00	233.73
—(b) Reports required by § 219.209(b) appended to rail equipment accident/incident report.	784 railroads	5.00 reports	30.00 minutes	2.50	194.78
225.19(a)—Rail-highway grade crossing accident/incident report—Form FRA F 6180.57.	784 railroads	2,161.50 forms	2.00 hours	4,323.00	336,804.93
—(d) Death, injury, or occupational illness (Form FRA F 6180.55a).	784 railroads	7,040.00 forms	1.00 hour	7,040.00	548,486.40
225.21—Railroad injury and illness summary—Form FRA F 6180.55.	784 railroads	9,408.00 forms	10.00 minutes	1,568.00	122,162.88
225.21—Annual railroad report of employee hours and casualties, by state—Form FRA F 6180.56.	784 railroads	784.00 forms	15.00 minutes	196.00	15,270.36
225.21/25—Railroad employee injury and/or illness record—Form FRA F 6180.98.	784 railroads	4,000.00 forms	1.00 hour	4,000.00	311,640.00
—Copies of forms to employees	784 railroads	3.60 form copies	2.00 minutes	0.12	9.35
225.21—Initial rail equipment accident/incident record—Form FRA F 6180.97.	784 railroads	10,194.00 forms	30.00 minutes	5,097.00	397,107.27
—Completion of Form FRA F 6180.97 because of rail equipment involvement.	FRA anticipates zero railroad submissions during this 3-year ICR period.				
—Alternative record for illnesses claimed to be work related—Form FRA F 6180.107.	784 railroads	150.00 forms	75.00 minutes	187.50	14,608.13
—Highway User Statement—RR cover letter and Form FRA F 6180.150 sent out to potentially injured travelers involved in a highway-rail grade crossing accident/incident.	784 railroads	721.00 letters/forms	50.00 minutes	600.83	46,810.67
—Form FRA F 6180.150 completed by highway user and sent back to railroad.	117 injured individuals	117.00 forms	45.00 minutes	87.75	6,836.60
225.25(h)—Posting of monthly summary	784 railroads	9,408.00 lists	5.00 minutes	784.00	61,081.44
225.27(a)(1)—Retention of records	784 railroads	7,500.00 records	2.00 minutes	250.00	19,477.50
—Record of Form FRA F 6180.107s	The estimated paperwork burden for this requirement is included in 225.21 (Alternative record for illnesses claimed to be work related).				
—Record of Monthly Lists	784 railroads	9,408.00 records	2.00 minutes	313.60	24,432.58
(a)(2)—Record of Form FRA F 6180.97	784 railroads	10,194.00 records	2.00 minutes	339.80	26,473.82
—Record of employee human factor attachments.	784 railroads	1,464.00 records	2.00 minutes	48.80	3,802.01
225.33—Internal Control Plans—Amendments	784 railroads	10.00 amendments	6.00 hours	60.00	4,674.60

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in U.S. dollar (D = C * wage rates) [2]
225.35—Access to records and reports	784 railroads	784.00 lists	20.00 minutes	261.33	20,360.22
225.37(a)—Optical media transfer of reports, updates, and amendments.	FRA anticipates zero submissions during this 3-year ICR period.				
(c)(2)—Electronic submission of reports, updates, and amendments.	784 railroads	4,704.00 submissions	3.00 minutes	235.20	18,324.43
Totals [3]	784 railroads	85,570 responses	N/A	30,283	2,359,310

Total Estimated Annual Responses: 85,570.

Total Estimated Annual Burden: 30,283 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: 2,359,310.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2023–08413 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0023]

Extension of a Previously Approved Collection: Public Charters

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Department of Transportation (DOT) invites the general public, industry and other governmental parties to comment on Public Charters. The pre-existing information collection request was previously approved by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted by June 20, 2023.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2016–0023] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Reather Flemmings (202–366–1865) and Mr. Brett Kruger (202–366–8025), Office of the Secretary, Office of International Aviation, U.S. Air Carrier Licensing/Special Authorities Division–X44, 1200 New Jersey Ave. SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0005.

Title: Public Charters, 14 CFR part 380.

Form Numbers: 4532, 4533, 4534, 4535.

Type of Review: Extension of a Previously Approved Collection: The current OMB inventory has not changed.

Abstract: 14 CFR part 380 establishes regulations embodying the Department's terms and conditions for Public Charter operators to conduct air transportation using direct air carriers. Public Charter operators arrange transportation for groups of people on chartered aircraft. This arrangement is often less expensive for the travelers than individually buying a ticket. Part 380 exempts charter operators from certain provisions of the U.S. code in order that they may provide this service. A primary goal of Part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus—consisting of OST Forms 4532, 4533, 4534, 4535, and supporting financial documents) with the Department for each charter program certifying that it has entered into a binding contract with a direct air carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of charter participants' funds. The prospectus must be accepted by the Department prior to the operator's advertising, selling or operating the charter. If the prospectus information were not collected it would be extremely difficult to assure compliance with agency rules and to assure that public security and other consumer protection requirements were in place for the traveling public. The information collected is available for public inspection (*unless the respondent specifically requests confidential treatment*). Part 380 does not provide any assurances of confidentiality.

Burden Statement: Completion of all forms in a prospectus can be accomplished in approximately two hours (30 minutes per form) for new filers and one hour for amendments (existing filings). The forms are simplified and request only basic information about the proposed programs and the private sector filer. The respondent can submit a filing to operate for up to one year and include as many flights as desired, in most cases. If an operator chooses to make changes to a previously approved charter operation, then the operator is required by regulations to file revisions to its original prospectus.

Respondents: Private Sector: Air carriers; tour operators; the general public (including groups and individuals, corporations and Universities or Colleges, etc.).

Number of Respondents: 245.

Number of Responses: 1,782.

Total Annual Burden: 891.

Frequency of Responses:

245 (respondents) × 4 = 980.

401 (amendments *from the same respondents*) × 2 = 802.

Total estimated responses: 980 + 802 = 1,782.

The frequency of response is dependent upon whether the operator is requesting a new program or amending an existing prospectus. Variations occur

[2] The dollar equivalent cost is derived from the 2021 Surface Transportation Board Full Year Wage A&B data series using the appropriate employee group hourly wage rage that includes a 75 percent overhead charge.

[3] Totals may not add due to rounding.

due to the respondents' criteria. On average four responses (forms 4532, 4533, 4534 and/or 4535) are required for filing new prospectuses and two of the responses (forms) are required for amendments. The separate hour burden estimate is as follows:

Total Annual Burden: 891 hours.

Approximately 1,782 (responses) × 0.50 (per form) = 891.

Public Comments Invited: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC.

Benjamin J. Taylor,

Director, Office of International Aviation.

[FR Doc. 2023–08406 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket ID Number DOT–OST–2014–0031]

Agency Information Collection: Activity Under OMB Review; Report of Traffic and Capacity Statistics—The T–100 System

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of DOT requiring U.S. and foreign air carriers to file traffic and capacity data. These reports are used to measure air transportation activity to, from, and within the United States.

DATES: Written comments should be submitted by May 22, 2023.

Comments: Comments should identify the associated OMB approval #2138–0040 and Docket ID Number DOT–OST–2014–0031. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0040, Docket—DOT–OST–2014–0031. The postcard will be date/time stamped and returned.

ADDRESSES: You may submit comments identified by DOT Docket ID Number DOT–OST–2014–0031 by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Services: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Fax: 202–366–3383.

Instructions: Identify docket number, DOT–OST–2014–0031, at the beginning of your comments, and send two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard. Internet users may access all comments received by DOT at *http://www.regulations.gov.* All comments are posted electronically without charge or edits, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

Electronic Access: You may access comments received for this notice at *http://www.regulations.gov,* by searching docket DOT–OST–2014–0031.

FOR FURTHER INFORMATION CONTACT: Jennifer Rodes, Office of Airline Information, RTS–42, Room E34–420, OST–R, BTS, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, Telephone Number (202) 366–8513, Fax Number (202) 366–3383 or Email *jennifer.rodes@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0040.

Title: Report of Traffic and Capacity Statistics—The T–100 System.

Form No.: Schedules T–100 and T–100(f).

Type of Review: Extension of a currently approved collection.

Respondents: Certificated, commuter and foreign air carriers that operate to, from or within the United States.

T100 Form

Number of Respondents: 119.
Number of Annual Responses: 1,428.
Total Burden per Response: 6 hours.
Total Annual Burden: 8,568 hours.

T100F Form

Number of Respondents: 190.
Number of Annual Responses: 2,280.
Total Burden per Response: 2 hours.
Total Annual Burden: 4,560 hours.
Needs and Uses:

Airport Improvement

The Federal Aviation Administration uses enplanement data for U.S. airports to distribute the annual Airport Improvement Program (AIP) entitlement funds to eligible primary airports, *i.e.,* airports which account for more than 0.01 percent of the total passengers enplaned at U.S. airports. Enplanement data contained in Schedule T–100/T–100(f) are the sole data base used by the FAA in determining airport funding. U.S. airports receiving significant service from foreign air carriers operating small aircraft could be receiving less than their fair share of AIP entitlement funds. Collecting Schedule T–100(f) data for small aircraft operations will enable the FAA to distribute these funds more fairly.

Air Carrier Safety

The FAA uses traffic, operational and capacity data as important safety indicators and to prepare the air carrier traffic and operation forecasts that are used in developing its budget and staffing plans, facility and equipment funding levels, and environmental impact and policy studies. The FAA monitors changes in the number of air carrier operations as a way to allocate inspection resources and in making decisions as to increased safety surveillance. Similarly, airport activity statistics are used by the FAA to develop airport profiles and establish priorities for airport inspections.

Acquisitions and Mergers

While the Justice Department has the primary responsibility over air carrier acquisitions and mergers, the Department reviews the transfer of

international routes involved to determine if they would substantially reduce competition, or determine if the transaction would be inconsistent with the public interest. In making these determinations, the proposed transaction's effect on competition in the markets served by the affected air carriers is analyzed. This analysis includes, among other things, a consideration of the volume of traffic and available capacity, the flight segments and origins-destinations involved, and the existence of entry barriers, such as limited airport slots or gate capacity. Also included is a review of the volume of traffic handled by each air carrier at specific airports and in specific markets which would be affected by the proposed acquisition or merger. The Justice Department uses T–100 data in carrying out its responsibilities relating to airline competition and consolidation.

Traffic Forecasting

The FAA uses traffic, operational and capacity data as important safety indicators and to prepare the air carrier traffic and operation forecasts. These forecasts are used by the FAA, airport managers, the airlines and others in the air travel industry as planning and budgeting tools.

Airport Capacity Analysis

The mix of aircraft types are used in determining the practical annual capacity (PANCAP) at airports as prescribed in the FAA Advisory Circular *Airport Capacity Criteria Used in Preparing the National Airport Plan.* The PANCAP is a safety-related measure of the annual airport capacity or level of operations. It is a predictive measure which indicates potential capacity problems, delays, and possible airport expansions or runway construction needs. If the level of operations at an airport exceeds PANCAP significantly, the frequency and length of delays will increase, with a potential concurrent risk of accidents. Under this program, the FAA develops ways of increasing airport capacity at congested airports.

Airline Industry Status Evaluations

The Department apprizes Congress, the Administration and others of the effect major changes or innovations are having on the air transportation industry. For this purpose, summary traffic and capacity data as well as the detailed segment and market data are essential. These data must be timely and inclusive to be relevant for analyzing emerging issues and must be based upon uniform and reliable data submissions that are consistent with the Department's regulatory requirements.

Mail Rates

The Department is responsible for establishing international and intra-Alaska mail rates. International mail rates are set based on scheduled operations in four geographic areas: Trans-border, Latin America, operations over the Atlantic Ocean and operations over the Pacific Ocean. Separate rates are set for mainline and bush Alaskan operations. The rates are updated every six months to reflect changes in unit costs in each rate-making entity. Traffic and capacity data are used in conjunction with cost data to develop the required unit cost data.

Essential Air Service

The Department reassesses service levels at small domestic communities to assure that capacity levels are adequate to accommodate current demand.

System Planning at Airports

The FAA is charged with administering a series of grants that are designed to accomplish the necessary airport planning for future development and growth. These grants are made to state metropolitan and regional aviation authorities to fund needed airport systems planning work. Individual airport activity statistics, nonstop market data, and service segment data are used to prepare airport activity level forecasts.

Review of IATA Agreements

The Department reviews all of the International Air Transport Association (IATA) agreements that relate to fares, rates, and rules for international air transportation to ensure that the agreements meet the public interest criteria. Current and historic summary traffic and capacity data, such as revenue ton-miles and available ton-miles, by aircraft type, type of service, and length of haul are needed to conduct these analyses: to (1) develop the volume elements for passenger/cargo cost allocations, (2) evaluate fluctuations in volume of scheduled and charter services, (3) assess the competitive impact of different operations such as charter versus scheduled, (4) calculate load factors by aircraft type, and (5) monitor traffic in specific markets.

Foreign Air Carriers Applications

Foreign air carriers are required to submit applications for authority to operate to the United States. In reviewing these applications, the Department must find that the requested authority is encompassed in a bilateral agreement, other intergovernmental understanding, or that granting the application is in the public interest. In the latter cases, T–100 data are used in assessing the level of benefits that carriers of the applicant's homeland presently are receiving from their U.S. operations. These benefits are compared and balanced against the benefits U.S. carriers receive from their operations to the applicant's homeland.

Air Carrier Fitness

The Department determines whether U.S. air carriers are and continue to be fit, willing and able to conduct air service operations without undue risk to passengers and shippers.

The Department monitors a carrier's load factor, operational, and enplanement data to compare with other carriers with similar operating characteristics. Carriers that expand operations at a high rate are monitored more closely for safety reasons.

International Civil Aviation Organization

Pursuant to an international agreement, the United States is obligated to report certain air carrier data to the International Civil Aviation Organization (ICAO). The traffic data supplied to ICAO are extracted from the U.S. air carriers' Schedule T–100 submissions.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued on April 17, 2023.

William Chadwick, Jr.,

Director, Office of Airline Information, Bureau of Transportation Statistics, U.S. Department of Transportation, Washington, DC.

[FR Doc. 2023–08361 Filed 4–20–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Department of the Treasury.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or ''Department''), Treasury proposes to modify a current Treasury system of records titled, ''Department of the Treasury—.018 E-Rulemaking System of Records'' under the Privacy Act of 1974 for the online collection through the Federal Docket Management System and/or *Regulations.gov* of public comments to notices of proposed rulemaking, proposed orders, and other policy or regulatory actions that are published in the **Federal Register** or rules or rule amendments, petitions, and other input collected from the public that may not be associated with statutory or regulatory notice and comment requirements.

DATES: Submit comments on or before May 22, 2023. The new routine uses will be applicable on May 22, 2023 unless Treasury receives comments and determines that changes to the system of records notice are necessary.

ADDRESSES: Comments may be submitted to the Federal eRulemaking Portal electronically at *http://www.regulations.gov.* Comments can also be sent to the Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, Attention: Revisions to Privacy Act Systems of Records. All comments received, including attachments and other supporting documents, are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For general questions and questions regarding privacy issues, please contact: Ryan Law, Deputy Assistant Secretary for Privacy, Transparency, and Records (202–622–5710), Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

I. E-Rulemaking

In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'') proposes to modify the system of records titled, ''Department of the Treasury—.018 E-Rulemaking System of Records.''

Treasury collects comments on rulemakings and other regulatory actions, which it timely publishes on a website to provide transparency in the informal rulemaking process under the Administrative Procedure Act (''APA''), 5 U.S.C. 553. The Treasury also may solicit comments or other input from the public that may not be associated with statutory or regulatory notice and comment requirements.

During an informal rulemaking or other statutory or regulatory notice and comment process, Department personnel may manually remove a comment from posting if the commenter withdraws his or her comments before the comment period has closed or because the comment contains obscenities or other material deemed inappropriate for publication by the Treasury. However, comments that are removed from posting will be retained by the Department for consideration, if appropriate under the APA.

Below is the description of the modified Treasury—.018 E-Rulemaking System of Records.

Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB, pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

II. The Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, a ''system of records'' is defined as any group of records under the control of a Federal Government agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act establishes the means by which Government agencies must collect, maintain, and use personally identifiable information associated with an individual in a government system of records.

Each Government agency is required to publish in the **Federal Register** a notice of a modified system of records in which the agency identifies and describes the system of records, the reasons why the agency uses the personally identifying information therein, the routine uses for which the agency will disclose such information outside the agency, and how individuals may exercise their rights under the Privacy Act to determine if the system contains information about them.

Dated: April 17, 2023.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER:

Department of the Treasury—.018 E-Rulemaking.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The locations at which the system is maintained by all Treasury bureaus and offices and their associated field offices are:

A. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

(1) Departmental Offices (DO): 1500 Pennsylvania Ave. NW, Washington, DC 20220.

a. The Office of Inspector General (OIG): 740 15th Street NW, Washington, DC 20220.

b. Special Inspector General for Pandemic Recovery (SIGPR): 1500 Pennsylvania Avenue NW, Washington, DC 20220.

c. Special Inspector General for the Troubled Asset Relief Program (SIGTARP): 1801 L Street NW, Washington, DC 20220.

d. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW, Suite 700A, Washington, DC 20005.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW, Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW, Washington, DC 20219.

(4) Fiscal Service: Liberty Center Building, 401 14th St. SW, Washington, DC 20227.

(5) Internal Revenue Service: 1111 Constitution Ave. NW, Washington, DC 20224.

(6) United States Mint: 801 Ninth St. NW, Washington, DC 20220.

(7) Bureau of Engraving and Printing (BEP): 14th & C Streets SW, Washington, DC 20228.

(8) Financial Crimes Enforcement Network: Vienna, VA 22183.

B. General Services Administration, 1800 F St. NW, Washington, DC 20006.

SYSTEM MANAGER(S):

A. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

(1) Departmental Offices (DO): 1500 Pennsylvania Ave. NW, Washington, DC 20220.

a. The Office of Inspector General (OIG): 740 15th Street NW, Washington, DC 20220.

b. Special Inspector General for Pandemic Recovery (SIGPR): 1500 Pennsylvania Avenue NW, Washington, DC 20220.

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B. General Services Administration, 1800 F St. NW, Washington, DC 20006.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; Administrative Procedure Act, Public Law 79–404, 60 Stat. 237; 5 U.S.C. 553 *et seq.,* and rules and regulations promulgated thereunder.

PURPOSE(S) OF THE SYSTEM:

To collect and maintain in an electronic system feedback from the public and industry groups regarding proposed rules and other Treasury regulatory actions in accordance with the Administrative Procedure Act (''APA'') or other statutory or regulatory provisions, as well as input on Treasury actions that may not be associated with notice and comment requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals providing comments or other input to the Treasury in response to proposed rules, industry filings or other Treasury request for comments associated with Treasury rules, notices, policies or procedures, whether the individuals provide comments or input directly or through their representatives. Any individuals who may be discussed or identified in the comments or input provided by others to the Treasury.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming comments or other input to the Treasury in response to proposed rules, or other Treasury request for comments associated with Treasury rules, policies or procedures, provided to the Treasury electronically, by facsimile or postal mail or delivery service. Comments or input submitted to Treasury may include the full name of the submitter, an email address and the name of the organization, if an organization is submitting the comments. The commenter may optionally provide job title, mailing address and phone numbers. The comments or input provided may contain other personal information, although the comment submission instructions advise commenters not to include additional personal or confidential information.

This system excludes comments or input for which the Treasury has received and either has approved or not yet decided a Freedom of Information Act or Privacy Act Request.

RECORDS SOURCE CATEGORIES:

Individuals and organizations providing comments or other input to the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act of 1974, 5 U.S.C. 552a(b), records and/or information or portions thereof maintained as part of this system may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To the United States Department of Justice (''DOJ''), for the purpose of representing or providing legal advice to the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(a) The Department or any component thereof;

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ or the Department has agreed to represent the employee; or

(d) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; and the use of such records by the DOJ is deemed by the DOJ or the Department to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected.

(2) To appropriate Federal, State, local, and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(3) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a court order where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(4) To a contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(5) To a congressional office from the records of an individual in response to an inquiry from that congressional office made pursuant to a written Privacy Act waiver at the request of the individual to whom the records pertain;

(6) To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) To the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(8) To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

(9) To other Federal agencies or entities when the disclosure of the existence of the individual's security clearance is needed for the conduct of government business, and

(10) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or Departmental Offices suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or Departmental Offices has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or Departmental Offices (including its information systems, programs, and

operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or Departmental Offices' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(11) To another Federal agency or Federal entity when the Department of the Treasury and/or Departmental Offices determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) 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;

(12) To General Services Administration for purposes of operating the E-Rulemaking system.

(13) To another Federal, State, local, foreign, or self-regulatory organization or agency responsible for implementing, issuing, or carrying out a rule, regulation, policy or guidance, when such information may be relevant to that agency's carrying out of its responsibilities.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by an individual's name, social security number, email address, electronic identification number and/or access/security badge number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention and disposal period depends on the nature of the comments or input provided to the Treasury. For example, comments that pertain to a Treasury proposed rule becomes part of the Treasury's central files and are kept permanently. Other input to the Treasury may be kept between one and 10 years, depending on the subject matter.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances.

Entrance to data centers and support organization offices is restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of similar sensitivity. Access is limited to authorized employees. Paper records are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in a locked room.

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information.

The GSA information technology system that hosts *regulations.gov* and FDMS is in a facility protected by physical walls, security guards, and requiring identification badges. Rooms housing the information technology system infrastructure are locked, as are the individual server racks. All security controls are reviewed on a periodic basis by external assessors. The controls themselves include measures for access control, security awareness training, audits, configuration management, contingency planning, incident response, and maintenance.

Records in FDMS are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intrusion detection, encryption, identification and authentication of users. Partner agencies manage their own access to FDMS through their designated partner agency account managers. Each designated partner agency account manager has access to FDMS. This level of access enables them to establish, manage, and terminate user accounts limited to their own agency.

RECORDS ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORDS PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing, in accordance with Treasury's Privacy Act regulations (located at 31 CFR 1.26), to the Freedom of Information Act (FOIA) and Transparency Liaison, whose contact information can be found at *http://www.treasury.gov/FOIA/Pages/index.aspx* under ''FOIA Requester Service Centers and FOIA Liaison.'' If an individual believes more than one bureau maintains Privacy Act records concerning him or her, the individual may submit the request to the Office of Privacy, Transparency, and Records, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Ave. NW, Washington, DC 20220.

No specific form is required, but a request must be written and:

- Be signed and either notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization;
- State that the request is made pursuant to the FOIA and/or Privacy Act disclosure regulations;
- Include information that will enable the processing office to determine the fee category of the user;
- Be addressed to the bureau that maintains the record (in order for a request to be properly received by the Department, the request must be received in the appropriate bureau's disclosure office);
- Reasonably describe the records;
- Give the address where the determination letter is to be sent;
- State whether or not the requester wishes to inspect the records or have a copy made without first inspecting them; and
- Include a firm agreement from the requester to pay fees for search, duplication, or review, as appropriate. In the absence of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria for a waiver or reduction of fees found in the FOIA statute at 5 U.S.C. 552(a)(4)(A)(iii).

You may also submit your request online at *https://rdgw.treasury.gov/foia/pages/gofoia.aspx* and call 1–202–622–0930 with questions.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Notice of this system of records was last published in full in the **Federal Register** on January 9, 2020 (85 FR 1198) as the Department of the Treasury—.018 E-Rulemaking System of Records.

[FR Doc. 2023–08415 Filed 4–20–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. 10, the Department of Veterans Affairs Advisory Committee on Disability Compensation (Committee) will host a virtual meeting on May 22–May 23, 2023. The meeting sessions will begin and end as follows:

Dates	Times
Monday, May 22, 2023.	9 a.m.–12:30 p.m. Eastern Standard Time (EST).
Tuesday, May 23, 2023.	9 a.m.–12 p.m. EST.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities (VASRD).

The Committee assembles and reviews relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provides an ongoing assessment of the effectiveness of the rating schedule, and gives advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The agenda will include updates on VASRD and briefings from various staffs on new and ongoing VA initiatives and priorities.

No time will be allocated at this virtual meeting for receiving oral presentations from the public. The public may submit one-page summaries of their written statements for the Committee's review. Public comments may be received no later than May 15, 2023, for inclusion in the official meeting record. Please send these comments to Jadine Piper, Veterans Benefits Administration, Compensation Service, at *21C_ACDC.VBACO@va.gov.*

Members of the public who wish to obtain a copy of the agenda should contact Jadine Piper at *21C_ACDC.VBACO@va.gov,* and provide their name, professional affiliation, email address and phone number. The call-in number (United States, Chicago) for those who would like to attend the meeting is: 872–701–0185; phone conference ID: 389 901 271#. Members of the public may also access the meeting by pasting the following URL into a web browser: *https://msteams.link/2DKS.*

Dated: April 18, 2023.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2023–08463 Filed 4–20–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Increase in Maximum Tuition and Fee Amounts Payable Under the Post-9/11 GI Bill

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the increase in the Post-9/11 GI Bill maximum tuition and fee amounts payable and the increase in the amount used to determine an individual's entitlement charge for reimbursement of a licensing, certification, or national test for the 2023–2024 academic year (AY), effective August 1, 2023 through July 31, 2024.

FOR FURTHER INFORMATION CONTACT: Jamak Clifton, Management and Program Analyst, Education Service (225), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at 202–461–9800 This is not a toll-free number.

SUPPLEMENTARY INFORMATION: For the 2023–2024 academic year, the Post-9/11 GI Bill allows VA to pay the actual net cost of tuition and fees not to exceed the in-state amounts for students pursuing training at public schools; $27,120.05 for students training at private and foreign schools; $27,120.05 for students training at non-degree granting schools; $15,497.15 for students training at vocational flight schools; and $13,172.57 for students training at correspondence schools. In addition, the entitlement charge for individuals receiving reimbursement of the costs associated with taking a licensing, certification, or national test is pro-rated based on the actual amount of the fee charged for the test relative to the rate of $2,262.59 for 1 month. Also, the entitlement charge for individuals receiving reimbursement of the costs associated with taking a preparatory course for licensure, certification, or national tests is prorated based on the actual amount of the fee charged for the covered preparatory course relative to the rate of $2,200.90 for 1 month. The maximum reimbursable amount for licensing and certification tests is $2,000. There is no maximum reimbursable amount for national tests.

Sections 3313, 3315, 3315A and 3315B of title 38 U.S.C. direct VA to increase the maximum tuition and fee payments and entitlement-charge amounts each AY (beginning on August 1st) based on the most recent percentage increase determined under 38 U.S.C. 3015(h). The most recent percentage increase determined under 38 U.S.C. 3015(h) is 2.8%, which was effective on October 1, 2022.

The maximum tuition and fee payments and entitlement charge amounts for training pursued under the Post-9/11 GI Bill beginning after July 31, 2023, and before August 1, 2024, are listed on the next page. VA's calculations for the 2023–2024 AY are based on the 2.8% increase.

2023–2024 ACADEMIC YEAR

Post–9/11 GI Bill maximum tuition and fee amounts

Type of school	Actual net cost of tuition and fees not to exceed
PUBLIC	In-State/Resident Charges.
PRIVATE/FOREIGN	$27,120.05.
NON-DEGREE GRANTING	$27,120.05.

2023–2024 ACADEMIC YEAR—Continued

Post–9/11 GI Bill maximum tuition and fee amounts

Type of school	Actual net cost of tuition and fees not to exceed
VOCATIONAL FLIGHT	$15,497.15.
CORRESPONDENCE	$13,172.57.

Post 9/11 entitlement charge amount for tests

LICENSING AND CERTIFICATION TESTS	Entitlement will be pro-rated based on the actual amount of the fee charged for the test relative to the rate of $2,262.59 for 1 month. The maximum reimbursable amount for licensing and certification tests is $2,000.
NATIONAL TESTS	Entitlement will be pro-rated based on the actual amount of the fee charged for the test relative to the rate of $2,262.59 for one month. There is no maximum reimbursable amount for national tests.
PREPARATORY COURSES FOR LICENSURE, CERTIFICATION, OR NATIONAL TESTS.	Entitlement will be pro-rated based on the actual amount of the fee charged for the covered preparatory course relative to the rate of $2,200.90 for 1 month.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on April 11, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

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

[FR Doc. 2023–08450 Filed 4–20–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Friday,

No. 77 April 21, 2023

Part II

The President

Executive Order 14095—Increasing Access to High-Quality Care and Supporting Caregivers

Federal Register
Vol. 88, No. 77
Friday, April 21, 2023

Presidential Documents

Title 3—

The President

Executive Order 14095 of April 18, 2023

Increasing Access to High-Quality Care and Supporting Caregivers

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. High-quality early care and education and long-term care are critical to our Nation's economic growth and economic security. Early care and education give young children a strong start in life, while long-term care helps older Americans and people with disabilities live, work, and participate in their communities with dignity. Access to both types of care is also critical to our national security because it helps ensure the recruitment, readiness, and retention of our military service members.

Throughout this order, early care and education are collectively referred to as ''child care.'' References to ''care'' that do not specify the type of care refer to both child care and long-term care. References to the ''care workforce'' refer to individuals and businesses working in the fields of child care and long-term care.

A sizeable majority of families and individuals in the United States who require care cannot access the affordable, high-quality care they need. The markets for child care and long-term care for persons with disabilities and older adults who need support in their homes and communities fail to deliver enough high-quality care because of a persistent gap between the costs of providing this care and the prices families can pay. High-quality care is labor intensive and requires skilled workers, and providers have limited ability to reduce costs. As a result, even when high-quality care is available, it costs far more than many families and individuals can afford, causing them to forgo care altogether, seek lower-quality care options, juggle unconventional shifts at work, reduce their own paid work hours, drop out of the labor force, or make other arrangements. Care expenditures represent a significant and increasing share of families' budgets, with child care prices growing by approximately 26 percent and some types of long-term care costs growing by over 40 percent in the last decade. Inadequate supply is exacerbated by high turnover in the care workforce. Care workers—disproportionately women of color—are among the lowest-paid in the country and often have to rely on public benefits despite working complex and demanding jobs. Investments in the care workforce are foundational to helping to retain care workers and improving health and educational outcomes. In recent years, more than half of the long-term care workforce and nearly 20 percent of the child care workforce turned over each year. And the workforce remains 8 percent smaller than before the COVID–19 pandemic.

In 2019, more than three in four United States households that searched for care reported difficulty finding adequate care for their young children, and roughly the same share of center-based child care providers turned families away because they lacked enough child care slots. Similarly, more than three in four long-term care service providers have reported not being able to accept new clients, making it harder for older Americans and people with disabilities to find the care they need. Military families consistently cite access to high-quality child care as an impediment to military spouse employment and family economic security. Difficulty accessing care also poses a challenge for both spouses—and, as data shows, particularly for women in dual military couples—to continuing their service if they have

caregiving responsibilities. The need for long-term care is likely to become more acute as our Nation's population ages. By 2060, there will be approximately twice as many adults over the age of 65 than in 2016, and projections indicate that there will be around 8 million long-term care job openings over the next decade.

Family caregivers provide informal, often unpaid, care to help loved ones live in their homes and communities, including caring for aging family members, people with disabilities, and children. At least 53 million people are family caregivers in the United States—including 5.5 million who are caring for wounded, ill, and injured service members and veterans—and many face challenges due to lack of support, training, and opportunities for rest. Family caregivers include spouses, parents, siblings, adult and minor children, grandparents, and other relatives. Family caregivers reflect the diversity of America's communities, and people can assume family caregiving responsibilities at any stage of life. Without adequate resources, family caregiving can affect caregivers' own physical and emotional health and well-being and contribute to financial strain. These negative consequences are felt most acutely by women, who make up nearly two-thirds of family caregivers and drop out of the workforce at a rate three times higher than men.

It is the policy of my Administration to enable families—including our military and veteran families—to have access to affordable, high-quality care and to have support and resources as caregivers themselves. It is also the policy of my Administration to ensure that the care workforce is supported, valued, and paid well. Additionally, care workers should have the free and fair choice to join a union.

The Congress must provide the transformative investments necessary to increase access to high-quality child care—including preschool and Head Start—and long-term care services, as well as high-quality, well-paying jobs that reflect the value the care workforce provides to families and communities. Such investments include removing barriers and providing the funding needed for Tribal Nations to effectively provide high-quality child care and long-term care.

Nearly every other advanced country makes greater public investments in care than the United States. Investing in care is an investment in the future of America's families, workforce, and economy.

While the Congress must make significant new investments to give families in this country more breathing room when it comes to care, executive departments and agencies (agencies) must do what they can within their existing authorities to boost the supply of high-quality early care and education and long-term care and to provide support for family caregivers. Through this order, I direct agencies to make all efforts to improve jobs and support for caregivers, increase access to affordable care for families, and provide more care options for families.

Sec. 2. *Increasing Compensation and Improving Job Quality for Family Caregivers, Early Educators, and Long-Term Care Workers.* (a) To increase compensation and benefits for early childhood educators and long-term care professionals who are providing federally funded services:

(i) the Secretary of Health and Human Services, through the Administrator for the Centers for Medicare and Medicaid Services (CMS), shall issue guidance to States on ways to use enhanced funding to better connect home- and community-based workers who provide services to Medicaid beneficiaries;

(ii) the Secretary of Health and Human Services shall implement strategies to encourage comparability of compensation and benefits between staff employed by Head Start grant recipients and elementary school teachers;

(iii) the Secretary of Health and Human Services shall expand efforts to improve care workers' access to health insurance; and

(iv) the Secretary of Education shall use grant notices for the Child Care Access Means Parents in School (CCAMPIS) program to encourage grantees to improve quality in funded programs, including by increasing compensation and providing support services for early childhood educators who serve children of students at CCAMPIS colleges using Federal and non-Federal funding as appropriate;

(v) the Department of the Treasury shall conduct outreach on the Saver's Match credit, and the Department of Commerce shall conduct—and the Small Business Administration is encouraged to consider conducting—outreach on potential Federal resources available to assist small businesses in offering retirement plans, including a per-employee credit of up to $1,000, as provided in the SECURE 2.0 Act of 2022 (Division T of Public Law 117–328), in order to ensure that the care workforce, including individuals and small businesses, are aware of Federal retirement assistance for which they may be eligible.

(b) To improve working conditions and job quality in federally assisted child care and long-term care programs, encourage providers to establish incentives to recruit and retain workers, help prevent burnout, make it as easy as possible for care workers to access behavioral health services, and thereby improve the care that individuals receive, the Secretary of Health and Human Services shall:

(i) consider additional actions—such as providing guidance, technical assistance, and provider and resident education—and rulemaking on nursing home staffing transparency to promote adequate staffing at nursing homes, building on the Department of Health and Human Services' efforts to propose minimum standards for staffing adequacy at nursing homes;

(ii) consider additional actions to reduce nursing staff turnover in nursing facilities and improve retention of those staff, advancing the Department of Health and Human Services' efforts to measure and adjust payments based on staff turnover; and

(iii) implement strategies to expand mental health support for the care workforce, including early childhood providers supported through the Child Care and Development Fund (CCDF) and Head Start.

(c) To expand training pathways and professional learning opportunities to increase job quality, improve quality of care, and attract new entrants into the care workforce, the Secretary of Labor and the Secretary of Education, in consultation with the Secretary of Health and Human Services, shall:

(i) encourage recipients of Federal financial assistance to expand opportunities for early childhood educators and long-term care professionals through community college programming, career and technical education, Registered Apprenticeship, pre-apprenticeships leading to Registered Apprenticeship, and other job training and professional development;

(ii) make available innovative funding opportunities, develop and evaluate demonstration projects for care training and educational attainment, and provide technical assistance to State, local, and Tribal partners to improve job quality for care occupations; and

(iii) develop partnerships with key stakeholders, including State, local, Tribal, and territorial governments; unions and labor organizations; State and local workforce development boards; institutions of higher education (including community colleges, Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority Serving Institutions); aging and disability networks; and national- and community-based organizations that focus on care (including professional membership organizations).

(d) To support family caregivers of beneficiaries of Federal health care programs and services, and in conjunction with implementing the 2022 National Strategy to Support Family Caregivers:

(i) the Secretary of Health and Human Services shall, consistent with the criteria set out in section 1115A(b)(2) of the Social Security Act

(42 U.S.C. 1315a(b)(2)), consider whether to select for testing by the Center for Medicare and Medicaid Innovation an innovative new health care payment and service delivery model focused on dementia care that would include family caregiver supports such as respite care;

(ii) the Secretary of Health and Human Services shall consider how better to evaluate and clearly set expectations for family caregivers in the Acute Hospital Care at Home program, which allows hospitals to treat in their homes those who would otherwise be hospital inpatients;

(iii) the Secretary of Health and Human Services shall take steps to ensure that hospitals are actively involving family caregivers in the discharge planning process, consistent with CMS condition of participation discharge planning requirements, including by promoting best practices such as partnerships with community-based organizations and using resources from the Administration for Community Living and the Agency for Healthcare Research and Quality;

(iv) the Secretary of Health and Human Services shall increase beneficiary communications and support family caregivers by increasing promotion of the option for Medicare beneficiaries to choose to give family caregivers access to their Medicare information via 1–800–MEDICARE and the State health insurance assistance program networks;

(v) the Secretary of Veterans Affairs shall consider issuing a notice of proposed rulemaking by the end of this fiscal year that would make any appropriate modifications to eligibility criteria for the Program of Comprehensive Assistance for Family Caregivers, which provides services and benefits, including a monthly stipend, for eligible caregivers of veterans who sustained a serious injury or illness in the line of duty; and

(vi) the Secretary of Veterans Affairs shall develop and implement a pilot program to offer psychotherapy via video telehealth to family caregivers within the Program of Comprehensive Assistance for Family Caregivers to improve their access to mental health services.

(e) To improve and expand opportunities through AmeriCorps to encourage more individuals to enter early learning careers, the Chief Executive Officer of AmeriCorps is encouraged to consider:

(i) expanding access to Segal AmeriCorps Education Awards, which AmeriCorps members can use to pay for education and training or reduce their student debt; providing loan forbearance for AmeriCorps members involved in early learning; and providing other benefits to supplement national service activities that support early learning; and

(ii) prioritizing applications that propose to implement or expand high-quality programs focused on early learning and prioritizing projects intended to prepare AmeriCorps members and AmeriCorps Seniors volunteers to enter early learning careers.

(f) To improve jobs of domestic child care and long-term care workers:

(i) the Secretary of Labor shall create and publish in multiple languages, as appropriate, compliance assistance and best practices materials—such as sample employment agreements for domestic child care and long-term care workers and their employers—to promote fair workplaces and ensure the parties know their rights and responsibilities, and shall identify other means to promote employers' adoption of best practices;

(ii) the Secretary of Labor shall work with community and other local partners to expand culturally and linguistically appropriate community outreach and education efforts to domestic child care and long-term care workers in order to combat their exploitation; and

(iii) the Chair of the Equal Employment Opportunity Commission is encouraged to work with the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security to develop materials addressing the employment rights of non-citizen domestic child care and long-term care workers who are legally eligible to work.

(g) To improve data and information on the care workforce:

(i) the Secretary of Labor shall conduct and publish an analysis of early childhood and home care workers' pay in comparison to the pay of other workers with similar levels of training and skill;

(ii) the Secretary of Labor shall issue guidance to help States and localities conduct their own analyses of comparable pay rates for care workers in their respective jurisdictions; and

(iii) the Secretary of Labor and the Secretary of Health and Human Services shall, in consultation with relevant agencies and external experts and organizations, jointly conduct a review to identify gaps in knowledge about the home- and community-based workforce serving people with disabilities and older adults; identify and evaluate existing data sources; and identify opportunities to expand analyses, supplement data, or launch new efforts to provide important data on the home- and community-based care workforce and ensure equity for people with disabilities and older adults. The Secretaries shall publicly release the findings and recommendations of this review no later than April 2024.

Sec. 3. *Making Care More Accessible and Affordable for Families.* (a) To increase access to affordable, high-quality child care and long-term care for workers delivering federally assisted projects:

(i) Agencies shall identify and issue guidance on which agency discretionary, formula, and program-specific funds can be used for child care and long-term care as a supportive service for workers who are being trained for and working on federally funded projects, and in doing so shall consider agency funds made available by the bipartisan Infrastructure Investment and Jobs Act (Public Law 117–58); Public Law 117–169, commonly referred to as the Inflation Reduction Act of 2022; and division A of Public Law 117–167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022.

(ii) With respect to the agency funds identified in subsection (a)(i) of this section:

(A) Agencies shall consider requiring, where appropriate, applicants for Federal job-creation or workforce development funds to provide affordable, accessible, safe, and reliable child care and long-term care for workers carrying out federally assisted projects (including both construction and operating phases where applicable), or shall consider preferencing applicants that use the funds for this purpose or encouraging applicants to use funds for this purpose. Agencies shall provide implementation guidance to relevant program staff and collaborate with the Department of Labor to identify potential support for these actions, including technical assistance for guidance and funding opportunities.

(B) Agencies shall consider providing technical assistance to help funding recipients provide access to child care and long-term care as a supportive service and to connect funding recipients with potential partners, including care associations, community-based organizations, Registered Apprenticeship and pre-apprenticeship programs, and labor unions.

(C) In cases where child care or long-term care is required or encouraged, agencies shall consider collecting information from funding recipients on whether and how they will provide access to child care and long-term care, and how many workers (including apprentices and pre-apprentices) would be affected.

(iii) The Secretary of Labor and the Secretary of Health and Human Services, in consultation with the Secretary of Commerce, shall support the efforts outlined in subsection (a) of this section by issuing guidance and providing technical assistance with best practices and models for how to provide supportive services, including child care and long-term care.

(b) To lower child care costs for families eligible for Federal programs, the Secretary of Health and Human Services shall:

(i) consider issuing regulations to pursue policies to reduce child care costs for families benefiting from CCDF;

(ii) identify potential opportunities to reduce barriers to eligibility for Head Start and CCDF;

(iii) encourage States, through all available avenues, to increase the use of Temporary Assistance for Needy Families funds for basic assistance and work supports for families—including access to child care—and to spend more funds on cash assistance for families; and

(iv) identify other potential strategies to make child care and Head Start more accessible for those families most in need.

(c) To help more Federal employees access affordable care:

(i) the Director of the Office of Personnel Management shall consider establishing criteria that support equitable and accessible employee participation in child care programs, to include agencies' adoption of income thresholds that are aligned with increasing costs of child care;

(ii) the Director of the Office of Personnel Management shall conduct a review of child care subsidy policy and agency program data to determine the effectiveness of current child care subsidies within the Federal Government;

(iii) the heads of agencies are encouraged to expand employee access to child care services through Federal child care centers, child care subsidies, or contracted care providers; and

(iv) the Department of Defense shall take steps to enhance recruitment and retention of the Department's child development program workers and to improve the affordability of child care for service members by September 2023, in addition to its ongoing efforts as part of the Fourteenth Quadrennial Review of Military Compensation to assess how child care costs impact the ability of the military to attract and retain its workforce.

Sec. 4. *Expanding Options for Families by Building the Supply of Care.* (a) To provide families with more options for high-quality long-term, home-, and community-based care and early learning services:

(i) The Secretary of Health and Human Services shall consider rulemaking to improve access to home- and community-based services under Medicaid. As part of any such rulemaking, the Secretary shall consider taking steps to support provider participation in Medicaid home- and community-based programs.

(ii) The Secretary of Health and Human Services shall issue policies that would support child care providers to give families more options to access high-quality child care providers, and shall update payment practices to improve provider stability and supply.

(iii) The Secretary of Education shall update a guide for schools and districts to expand high-quality early learning programming using Federal funds so that more preschoolers are fully prepared to succeed in school.

(iv) The Secretary of Education and the Secretary of Health and Human Services shall identify and disseminate evidence-based practices for serving children with disabilities and their families in high-quality early childhood education programs, including Head Start. The Secretaries shall also take steps to ensure that services are inclusive of children with disabilities and their families; highlight any resources that are available to aid in that effort, including for preschool-aged children with disabilities under section 619 of the Individuals with Disabilities Education Act (IDEA) and for infants and toddlers with disabilities and their families under Part C of the IDEA; and provide information to support all early childhood programs in meeting their obligations under section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

(v) The Director of the Bureau of Consumer Financial Protection is encouraged to consider developing financial guidance resources that support families during their care planning.

(vi) The Secretary of Health and Human Services shall take steps to streamline processes for Tribes to use CCDF and Head Start funding to construct and improve facilities, including facilities that are jointly funded.

(vii) The 12 agencies that signed the October 2022 Memorandum of Agreement to implement Public Law 102–477 (the ''Tribal 477 Program'') shall increase the effectiveness of Tribal employment and training programs to ensure child care can be used as a support for families by reducing and streamlining administrative requirements, including through consolidation of budgeting, reporting, and auditing systems.

(b) To expand options for quality home- and community-based services to veterans:

(i) The Secretary of Veterans Affairs shall consider expanding the existing Veteran Directed Care Program—which provides veterans who need help with daily living with a budget to spend on home- and community-based services including personal care services—to all Department of Veterans Affairs Medical Centers by the end of Fiscal Year 2024, and shall consider developing an implementation plan for this expansion by June 2023.

(ii) The Secretary of Veterans Affairs shall consider designing and evaluating a pilot program in no fewer than five veteran sites or in five States for a new Co-Employer Option for delivering veteran home health services. Features of the program may include allowing veterans to choose who provides their care and to determine when and how that care is delivered, and connecting veterans with a third-party agency that would help coordinate administrative tasks and act as an intermediary between veterans and their home health workers. Should the Department of Veterans Affairs implement this pilot program, it shall provide an implementation plan—including cost estimates and evaluation strategy—to the President, through the Assistant to the President for Domestic Policy, before August 31, 2023.

(iii) The Secretary of Veterans Affairs shall consider expanding the Home-Based Primary Care program by adding 75 new interdisciplinary teams to provide care to veterans in their homes.

(c) To increase the supply of providers and options for families by encouraging greater private financial protection, support, and technical assistance for care providers:

(i) the Secretary of the Treasury shall consider providing information to and sharing industry best practices with Community Development Financial Institutions to facilitate capital flows and support to care providers;

(ii) the Administrator of the Small Business Administration is encouraged to consider publishing a guide on how individuals in the care workforce may start and sustainably operate care businesses locally and through Small Business Administration programming; and

(iii) the Director of the Bureau of Consumer Financial Protection is encouraged to consider issuing guidance addressing financial institution practices that may increase the burden on the care workforce, discourage their work, and harm their financial well-being.

(d) To build the capacity of local communities to better coordinate and deliver care:

(i) the Secretary of Health and Human Services shall review existing policies to identify opportunities—including among Tribal communities—to increase the capacity of community care entities by providing operational support to these networks of providers; and

(ii) the Secretary of Agriculture shall use the Rural Partners Network and issue guidance developed in partnership with the Secretary of Health and Human Services to promote opportunities—including by hosting workshops—to increase access to child care and long-term care in rural and Tribal communities.

(e) To make the delivery and design of Federal care assistance and programs work better for families, the care workforce, and people seeking care, the Secretaries of the Treasury, Defense, Agriculture, Labor, Health and Human Services, Education, and Veterans Affairs shall consider—and the Administrator of the Small Business Administration is encouraged to consider—prioritizing engagement with parents, guardians, and other relatives with care responsibilities; individuals receiving long-term care; State and local care experts; care providers and workers; employers; and labor unions.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

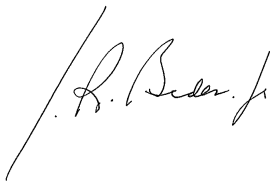
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

(c) Where not already specified, independent agencies are encouraged to comply with the requirements of this order.

(d) This 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.



THE WHITE HOUSE,
April 18, 2023.

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