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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0692; Project Identifier MCAI–2019–00140–E; Amendment 39–22016; AD 2022–08–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Pratt & Whitney Canada Corp. (P&WC) PT6A–34, –34B, –34AG, –114, and –114A model turboprop engines. This AD was prompted by several reports of low-time fractures of compressor turbine (CT) blades resulting in loss of power or in-flight shutdown (IFSD) of the engine. This AD requires replacement of certain CT vanes. This AD also requires removal from service of certain CT blades when these blades have been operated with certain CT vanes. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 27, 2022.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0692; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; fax: (781) 238–7199; email: *barbara.caufield@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all P&WC PT6A–34, –34B, –34AG, –114, and –114A model turboprop engines. The NPRM published in the **Federal Register** on August 17, 2020 (85 FR 49981). The NPRM was prompted by several reports of low-time fractures of CT blades resulting in loss of power or IFSD of the engine. In the NPRM, the FAA proposed to require replacement of certain CT vanes. The NPRM also proposed to require the removal from service of certain CT blades when these blades have been operated with certain CT vanes. The FAA is issuing this AD to address the unsafe condition on these products.

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF 2019–30R1, dated December 17, 2019 (referred to after this as ''the MCAI''), to address the unsafe condition on these products. The MCAI states:

> There have been several reported events of low time CT blade fractures resulting in power loss/In-flight shutdown (IFSD) on post P&WC Service Bulletin (SB) 1669 configured PT6A–114 engines, featuring new CMSX–6 CT blades. In addition, relatively low time failures of Non-P&WC CT blades have also been reported on PT6A–34 and –114 series engines.
>
> In service data shows that these low time failures were reported on engines that had CT vanes installed that were repaired in accordance with repair specification number STI 72–50–254 held by Southwest Turbine Inc. (STI). Most of the affected engines are installed on single-engine powered aeroplanes and some events have resulted in the loss of the aeroplane and fatalities.
>
> Dimensional checks and operational testing of the subject STI repaired CT vane removed from an incident engine, revealed that it did not conform to the engine manufacturer's CT vane type design criteria. The noted variations and features in the STI repaired CT vane can cause airflow distortion and subsequent aerofoil excitation of the CT blades resulting in High Cycle Fatigue (HCF) failure of the CT blades. Test data indicates that the stress levels induced in CT blades by the adverse effect of subject airflow distortion exceeds the design requirements for CMSX–6 CT blades.
>
> An IFSD or loss of power on a single-engine powered aeroplane under certain conditions can lead to an unsafe condition as seen in some past events. [Transport Canada] AD CF–2019–30 was issued on 19 August 2019 to address the potential hazard of power loss/IFSD as a result of CT blade failures on engines with CT vanes installed that were repaired in accordance with repair specification number STI 72–50–254.
>
> This [Transport Canada] AD revision, CF–2019–30R1, is issued to update the background information and to clarify the affected P&WC CT blade Part Numbers (P/Ns).

You may obtain further information by examining the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0692.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from 13 commenters. The commenters were Southwest Turbine Inc. (STI), an individual commenter, and 11 anonymous commenters. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise Required Actions

STI requested that the FAA revise the reference in paragraph (g)(1)(i), Required Actions, of this AD from ''. . . non-STI-repaired CT vane'' to ''. . . non-STI 72–50–254 repaired CT vane. . .'' The commenter reasoned that this AD specifically addresses CT vanes repaired using STI Repair Specification STI 72–50–254 (STI 72–50–254). Therefore, operators should be allowed to install CT vanes not repaired using STI 72–50–254 and repaired within STI's current FAA rating. Additionally, STI reasoned that this change would mirror the language in the Corrective Actions, paragraph 1, of Transport Canada AD CF–2019–30R1.

The FAA agrees and updated paragraph (g)(1)(i) of this AD to refer to CT vanes not repaired using STI 72–50–254. This change places no additional burden on operators who are required to comply with this AD.

Request To Remove Engines From Applicability

STI requested that the FAA remove P&WC PT6A–34, –34B, and –34AG model turboprop engines from paragraph (c), Applicability, of this AD. The commenter reasoned that of the 20 P&WC CMSX–6 CT blade failures, only six blade failures occurred with STI 72–50–254 repaired CT vanes installed. Those six blade failures occurred on engines with CT vanes repaired using STI 72–50–254, which were installed in P&WC PT6A–114A model turboprop engines.

In addition, the commenter suggested that the only STI-repaired CT vane installed on engines that has experienced CT blade failures was CT vane part number (P/N) 3029051. The commenter continued that CT vane, P/N 3029051, is not eligible for installation in P&WC PT6A–34, –34B, and –34AG model turboprop engines, and therefore, these model engines should be removed from the applicability of this AD.

STI cited Docket No. FAA–2013–0766 (AD 2014–17–08, 79 FR 52172, September 3, 2014), which was superseded by AD 2014–17–08R1, (80 FR 24791, May 1, 2015), and the FAA's responses to public comments in the preamble of these ADs. While referencing these ADs, STI underlined specific portions of public comments involving the P&WC CMSX–6 CT blade being an unproven CT blade replacement that has experienced low-time failures and has been identified for removal in P&WC PT6A–34 model turboprop engines. STI indicated that the FAA acknowledged the failure mode in other P&WC engines, specifically including PT6A–34 turboprop engines, was well understood and stated there have been no failures of P&WC CMSX–6 CT blades in PT6A–34 turboprop engines with STI 72–50–254 repaired CT vanes. STI commented that, for these reasons, the STI 72–50–254 repaired CT vane rings cannot be the cause of PWC CMSX–6 CT blade failures in PT6A–34 series engines.

The FAA disagrees. The FAA recognizes that STI-repaired CT vane P/N 3029051 is not eligible for installation in P&WC PT6A–34, –34B, and –34AG model turboprop engines. The FAA notes, however, that an additional affected part-numbered STI-repaired vane is eligible for installation in P&WC PT6A–34, –34B, and –34AG model turboprop engines. In addition, CT blade failures have occurred with STI-repaired CT vanes installed in P&WC PT6A–34, –34B, and –34AG model turboprop engines and are susceptible to the unsafe condition of this AD. Further, Table 2 of Southwest Turbine Repair, Inc., STI 72–50–254, Revision 08, dated April 14, 2019, lists P&WC PT6A–34, –34B, –34AG model turboprop engines as eligible for this repair.

The FAA issued AD 2014–17–08 (79 FR 52172, September 3, 2014) and AD 2014–17–08R1 (80 FR 24791, May 1, 2015) to require replacement of P&WC IN100 CT blades with P&WC CMSX–6 CT blades. Although there have been failures of the P&WC CMSX–6 CT blades with CT vanes not repaired by STI, the FAA has found the failure rate of CT blades with CT vanes not repaired by STI to be approximately one-tenth of those that were repaired by STI.

Request To Restrict Applicability to Certain CT Blades

STI requested that the FAA revise paragraph (c), Applicability, of this AD to indicate removal of STI 72–50–254 repaired CT vanes should not apply to engines operating with pre-P&WC SB PT6A–72–1669 and pre-P&WC SB PT6A–72–1690 IN100 CT blades. The commenter reasoned that the MCAI and the NPRM addressed the unsafe condition of failure of P&WC CMSX–6 CT blades. The commenter stated that the AD should not require STI 72–50–254 repaired CT vanes to be removed when operated with P&WC IN100 CT blades.

The FAA disagrees with revising paragraph (c), Applicability, of this AD to limit the AD applicability to turboprop engines with certain CT blades installed. Although most CT blades failures have occurred with P&WC CMSX–6 CT blades installed, the FAA's data indicate that several P&WC IN100 CT blade failures occurred with STI-repaired CT vanes before incorporating procedures in P&WC SB PT6A–72–1669 and P&WC SB PT6A–72–1690. Consequently, this AD requires that any CT vane with P/N 3029051, 3032151, or 3123001 repaired in accordance with STI 72–50–254 be removed from service.

Request To Restrict Applicability by CT Vane Part Number

STI requested that the FAA update paragraph (c), Applicability, of this AD to indicate that only STI 72–50–254 repaired CT vanes P/N 3029051 or P/N 3123001 are affected by this AD. STI reasoned that all the P&WC CMSX–6 CT blade failures that they are aware of occurred in PT6A–114A engines operating with STI 72–50–254 repaired CT vane P/N 3029051. STI continued that there is no evidence that identifies discrepant conditions or CT blade failures with any other part numbered STI 72–50–254 repaired CT vanes.

The FAA disagrees that only STI 72–50–254 repaired CT vanes P/N 3029051 or 3123001 are affected by the unsafe condition addressed by this AD. The FAA has reviewed data that shows failures of another CT vane P/N in addition to the two P/Ns referenced by the commenter. In response to this comment, the FAA updated paragraph (g)(1)(i), Required Actions, of this AD to require the removal from service of any affected CT vane, P/N 3029051, 3032151, or 3123001, repaired in accordance with STI 72–50–254.

Request To Require Installation of Dampers/Dampeners

STI, an individual commenter, and two anonymous commenters suggested that the FAA require operators install under platform seals (dampers or dampeners) introduced by P&WC SB PT6A–72–1769, dated December 21, 2015. One commenter reasoned that of the 20 CMSX–6 CT blade fatigue failures that have occurred, none had occurred when dampeners were installed. Based on a study and testing by P&WC, the commenter determined that the dampeners appeared to have solved the ongoing problem of P&WC CMSX–6 CT blade failures, regardless of which CT vane was installed. The commenter suggested that the FAA withdraw the NPRM and replace it with an AD requiring the installation of the dampeners.

An anonymous commenter and an individual commenter referred to P&WC documentation in which P&WC indicated that failures of P&WC CMSX–6 CT blades in normal operation were caused by vibratory stress, and the previous generation of CT blades did not exhibit this problem. To reduce these vibratory stresses, P&WC introduced dampers. The two commenters suggested requiring dampers and CT vane clocking to reduce vibratory stresses.

The FAA disagrees with the suggestion to require operators to install under platform seals to address the unsafe condition. Although data suggest dampeners and clocking reduce vibratory stresses, dampeners and clocking do not eliminate the unsafe condition caused by the installation of the STI-repaired CT vanes.

Comments on Root Cause of CT Blade Failure

An individual commenter questioned whether Transport Canada CF–2019–30R1, the MCAI on which the FAA's NPRM is based, tested a representative sample of affected CT blades and

whether the root cause of the unsafe condition was determined accurately. The commenter suggested that the MCAI is based on testing of a single STI-repaired CT vane from an engine that suffered catastrophic CT blade failure during an engine test run following an overhaul. The commenter stated that P&WC engineers documented that the root cause of the CT blade failure was undetermined and that the STI-repaired CT vane was not a representative sample due to sustained damage.

An anonymous commenter noted that of the 16 P&WC CMSX–6 blade failures, 11 had P&WC CT vanes installed. The commenter stated that this equates to an approximate 70% failure rate with the P&WC CT vanes. The commenter questioned how a CT vane made by an alternate supplier can be blamed as the cause of these failures.

The FAA disagrees with these comments. The MCAI and this AD are not based exclusively on testing of a single STI-repaired CT vane. Transport Canada and the FAA reviewed data from 38 CT blade failure events prior to issuance of the MCAI and this AD. The relative rates of CT blade failure are not simply the ratio of the number of events, but also includes the number of engines with each part type installed. Although there have been failures of the P&WC CMSX–6 CT blades with non-STI repaired CT vanes installed, the FAA has found the failure rate of CT blades with non-STI repaired CT vanes to be approximately one-tenth of the failure rate of those that were repaired by STI.

Comments That the P&WC CMSX–6 CT Blades Are the Cause of Failures

Several anonymous commenters and an individual commenter cited the history of P&WC CMSX–6 CT blade failures and the resulting P&WC service bulletins involving procedures to inspect and replace the CT blades. The commenters stated these failures occurred with factory manufactured zero-time P&WC model engines and engines in operation with both P&WC CT vanes and STI-repaired CT vanes installed. According to an individual commenter, the evidence to condemn the STI-repaired CT vane would also apply to the P&WC CT vane. Considering that factory manufactured, zero-time P&WC engines have experienced CT blade failures, the commenters concluded that unsafe condition with these blades cannot be the result of a repair process.

Further, an anonymous commenter referenced a 2018 case in Dallas County, Texas involving P &WC. The commenter summarized the case to include blade development and problems encountered from coating cracks migrating into the base material, gap platform, vibratory stress near the operating rotational speed of the engine and other areas of concern with the CT blade development. The commenter recommended that the FAA review Analytical Summary D9297 (P&WC 008643–008680), and Analytical Summary E7739, dated September 24, 2013 (P&WC 008599–008617), which, the commenter states, both determined the problem to be the CT blade.

An anonymous commenter suggested that the FAA demand all documents relating to the process and development of the P&WC CMSX–6 CT blade to include testing, emails, minutes of meetings, and any sworn testimony given, prior to deciding on the proposed AD. The commenter suggested that the CT blade is the root cause of the failures, the manufacturer is dictating the AD, and the manufacturer is going after a competitor.

STI cited National Transportation Safety Board (NTSB) Report, No. WPR14FA024, dated October 14, 2015, which detailed an October 21, 2013 failure involving an STI 72–50–254 repaired CT vane. STI commented that NTSB made no findings that indicated STI 72–50–254 repaired CT vane contributed to the event.

An anonymous commenter stated they had a P&WC PT6A–114A model turboprop engine undergoing overhaul and 18 P&WC CMSX–6 CT blades failed the process compensated resonance testing per P&WC SB PT6A–72–1762. The commenter suggested that these failures indicate that there is a design flaw or quality escape with P&WC CMSX–6 CT blades.

The FAA does not agree with the commenters that there is an unsafe condition affecting the P&WC CT blades. The FAA has reviewed event reports, analyses, and test reports to make this determination.

Request To Consider Inaccuracy Tolerance

STI requested that the FAA consider an inaccuracy tolerance of 30% when reviewing test data. STI cited P&WC report E8093 that indicates a 30% variance in repeatability of non-intrusive stress measurement (NSMS) CT blade tip deflection of a P&WC CT vane. STI suggested that P&WC retest prior configurations to determine the cause of variation in repeatability.

The FAA disagrees to consider inaccuracy tolerance. P&WC examined three STI-repaired CT vanes via dimensional inspection, one of which was also tested using Non-intrusive Stress Measurement System (NSMS), and determined the STI-repaired CT vanes did not meet P&WC's type design criteria. The STI-repaired CT vane that P&WC tested had scratches not exceeding a depth of 0.5 mils that did not alter the dimensional aspects of the CT vane casting and assembly when measured and did not preclude the engine from running during the NSMS testing.

Question About the Number of CT Blade Failures

An anonymous commenter asked how many CT blade failures have occurred after incorporating P&WC SB PT6A–72–1768 and P&WC SB PT6A–72–1769. Another anonymous commenter asked how many CT blade failures on turboprop engines, equipped with CT vane P/N 3079351–01, which is the third generation of single crystal blade used by P&WC in the affected engines, have occurred after incorporating P&WC SB PT6A–72–1749.

The FAA notes that no known failures of CT blades have occurred after incorporating P&WC SB PT6A–72–1768, P&WC SB PT6A–72–1769, or P&WC SB PT6A–72–1749.

Comment About Repair Variation in P&WC CT Vanes

STI commented that P&WC regularly returns to service overhauled CT vanes that exhibit greater variation in repair than that of STI-repaired CT vanes. STI stated that P&WC's inspection requirements for new CT vanes are different than overhauled CT vanes, and deviating features found on P&WC's overhauled CT vanes are not inspected prior to release.

The FAA cannot confirm STI's comment regarding P&WC's returned-to service part variation. Most engine new-part inspection specifications differ from those for used or overhauled parts. As stated in an earlier comment reply, the FAA reviewed data from 38 CT blade failure events to address the unsafe condition in this AD. Although there have been failures of CT blades with CT vanes not repaired by STI, the FAA has found the failure rate of CT blades with CT vanes not repaired by STI is approximately one-tenth of those that were repaired by STI.

Comment About Original Equipment Manufacturer (OEM) Regulating the Regulators

Two anonymous commenters suggested that this AD is an example of the OEM regulating the regulators.

The FAA disagrees. The data reviewed by the FAA shows that CT blade stresses are significantly higher in engines with STI-repaired CT vanes,

compared to those with P&WC CT vanes installed. In addition, event data reviewed by the FAA shows that CT blade failure events are approximately 10 times greater in engines equipped with STI-repaired CT vanes as opposed to P&WC CT vanes.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information

The FAA reviewed Southwest Turbine Repair, Inc., STI 72–50–254, Revision 08, dated April 14, 2019. This service information describes procedures for repair of the compressor turbine vane ring assembly.

Costs of Compliance

The FAA estimates that this AD affects 907 engines installed on airplanes of U.S. registry. The FAA estimates that 63 engines will need to replace the CT vanes and CT blades.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace CT vanes	16 work-hours × $85 per hour = $1,360	$115,789	$117,149	$7,380,387
Remove and replace CMSX–6 CT blade set	16 work-hours × $85 per hour = $1,360	$90,271	$91,631	$5,772,753

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2022–08–13 Pratt & Whitney Canada Corp.: Amendment 39–22016; Docket No. FAA–2020–0692; Project Identifier MCAI–2019–00140–E.

(a) Effective Date

This airworthiness directive (AD) is effective May 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Pratt & Whitney Canada Corp. PT6A–34, –34B, –34AG, –114, and –114A model turboprop engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by several reports of low-time fractures of compressor turbine (CT) blades resulting in loss of power or in-flight shutdown of the engine. The FAA is issuing this AD to prevent failure of the CT blade. The unsafe condition, if not addressed, could result in failure of the engine, in-flight shutdown, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) Within 250 flight hours (FHs) or 270 days after the effective date of this AD, whichever occurs first:

(i) Remove from service any CT vane, part number (P/N) 3029051, 3032151, or 3123001, repaired in accordance with Southwest Turbine Inc. (STI) Repair Specification STI 72–50–254 (STI 72–50–254) and replace with a non-STI 72–50–254 repaired CT vane.

(ii) Remove from service any CMSX–6 CT blade that has been operated on an affected engine with any CT vane repaired in accordance with STI 72–50–254.

(2) [Reserved]

(h) Installation Prohibition

After the effective date of this AD, do not install on any engine a CT vane, P/N 3029051, 3032151, or 3123001, that was repaired in accordance with STI 72–50–254.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7146; fax: (781) 238–7199; email: *barbara.caufield@faa.gov*.

(2) Refer to Transport Canada AD CF 2019–30R1, dated December 17, 2019, for more information. You may examine the Transport Canada AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0692.

(k) Material Incorporated by Reference

None.

Issued on April 7, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08562 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0032; Project Identifier AD–2020–01314–P; Amendment 39–22013; AD 2022–08–10]

RIN 2120–AA64

Airworthiness Directives; Hamilton Sundstrand Corporation Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–12–07 for certain Hamilton Sundstrand Corporation (Hamilton Sundstrand) 54H model propellers. AD 2020–12–07 required initial and repetitive eddy current inspections (ECI) of certain propeller blades and replacement of the propeller blades that fail the inspection. This AD was prompted by a report of the separation of a 54H60 model propeller blade installed on a United States Marine Corps Reserve (USMCR) KC–130T airplane during a flight in July 2017. This AD requires initial and repetitive ECI of all propeller blades installed on Hamilton Sundstrand 54H60 propeller hubs and replacement of any propeller blade that fails inspection. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 27, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 27, 2022.

ADDRESSES: For service information identified in this final rule, contact Hamilton Sundstrand, 1 Hamilton Road, Windsor Locks, CT 06096–1010; phone: (877) 808–7575; email: *CRC@collins.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0032.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov*by searching for and locating Docket No. FAA–2021–0032; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7761; fax: (781) 238–7199; email: *9-AVS-AIR-BACO-COS@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–12–07, Amendment 39–21142 (85 FR 36145, June 15, 2020), (''AD 2020–12–07''). AD 2020–12–07 applied to certain Hamilton Sundstrand 54H model propellers. Note that AD 2020–12–07 and the Hamilton Sundstrand service information reference 54H60 model propellers whereas this AD references 54H model propellers. Hamilton Sundstrand 54H60 model propellers are 54H model propellers with a 54H60 model propeller hub.

The NPRM published in the **Federal Register** on February 25, 2021 (86 FR 11473). The NPRM was prompted by a report of the separation of a 54H60 model propeller blade installed on a USMCR KC–130T airplane during a flight in July 2017. The USMCR investigation of this event revealed the Hamilton Sundstrand 54H60 model propeller blade separated due to corrosion pitting and a resultant intergranular radial crack that was not corrected at the last propeller overhaul. From this intergranular crack, a fatigue crack initiated and grew under service loading until the Hamilton Sundstrand 54H60 model propeller blade could no longer sustain the applied loads and ultimately the blade separated. The separation of the blade resulted in the loss of the airplane and 17 fatalities. The investigation further revealed that 54H60 model propeller blades manufactured before 1971 are susceptible to cracks of the propeller blade in the area of the internal taper bore. The applicability of AD 2020–12–07 was therefore limited to those Hamilton Sundstrand 54H60 model propellers blades with a blade serial number (S/N) below 813320, which are those propeller blades manufactured before 1971.

Since the FAA issued AD 2020–12–07, the manufacturer determined that all propeller blades installed on Hamilton Sundstrand 54H model propellers with a 54H60 model propeller hub are susceptible to intergranular corrosion cracking in the blade taper bore. As a result, the manufacturer published Hamilton Sundstrand Alert Service Bulletin (ASB) 54H60–61–A154, Revision 1, dated May 29, 2020 (ASB 54H60–61–A154), to expand the effectivity to include propeller blades with a blade S/N below 813320, all propeller blades if the propeller contains a propeller blade with a blade S/N below 813320, and all propeller blades that have not been overhauled within ten years. ASB 54H60–61–A154 also provides instructions for concurrent compliance with Hamilton Sundstrand ASB 54H60–61–A155, dated May 29, 2020, to ECI an expanded and deeper taper bore area. In the NPRM, the FAA proposed to require initial and repetitive ECI of all propeller blades installed on Hamilton Sundstrand 54H60 propeller hubs and replacement of any propeller blade that fails inspection. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

The FAA received comments from one commenter, Lynden Air Cargo, LLC (LAC). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Remove ''All'' From Proposed AD Requirements

LAC noted that the proposed AD used the word ''all'' in reference to propeller blades in the preamble of the NPRM. LAC stated that this AD should not apply to newly manufactured (–2A)

propeller blades because those propeller blades are manufactured with an enhanced process to reduce the risk of failure.

While the –2A propeller blades (P/Ns A7111D–2A and A7111E–2A) and overhauled blades (P/Ns A7111D–2A2, A7111D–2A3, A7111E–2A2, and A7111E–2A3) have an enhanced process and improved protection, these blades are still susceptible to cracking in the propeller blade taper bore. The unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action. The FAA did not change this AD as a result of this comment.

Comment Concerning Estimated Costs and the Availability of Replacement Propeller Blades

LAC stated that it disagrees with the Estimated Costs section in the NPRM. LAC noted that the proposed AD underestimated the cost of compliance, and determined that the total costs associated with the performance of an ECI of all propeller blades installed on the propeller and reporting the ECI results for U.S. operators was approximately $1,948,280 per inspection interval. LAC used a labor rate of $130 per hour in its estimate, suggesting the FAA's estimated $85 per hour amount in the proposed AD was inaccurate. LAC also determined that the total compliance cost over the typical life of a new propeller (4 inspections) was $7,793,120 for propellers installed on aircraft of U.S. registry, not including lost revenue due to the aircraft being out of service. LAC provided a table within its comment, specifying LAC's breakdown of costs associated with complying with this AD. LAC also noted that Derco, the only supplier of new manufactured replacement propeller blades, was quoting $68,000 per blade, which was higher than the FAA's estimated $63,500 per blade, and would not guarantee or specify any delivery dates or quantities available.

The comments from LAC are addressed in paragraph 2 of the Regulatory Flexibility Determination of this AD. The FAA did not make any changes to this AD as a result of this comment.

Comment on Effect of AD on Small Entities

LAC noted that due to the small population of civil certified aircraft using the 54H model propellers, the proposed AD could be considered a significant regulatory action due to it being economically significant. LAC also noted that the proposed AD would have a significant economic impact on a substantial number of small entities because the majority of civil operators affected by the AD are categorized by the Small Business Administration (SBA) as small businesses, having fewer than 500 employees.

As set forth in this preamble, this AD is not a ''significant regulatory action'' under Executive Order 12866. Regarding LAC's comment on the economic impact to small entities, that comment is addressed in paragraph 2 of the Regulatory Flexibility Determination in the preamble of this AD. The FAA did not change this AD as a result of this comment.

Comment on Effect of AD on Intrastate Aviation in Alaska

LAC noted that the proposed AD would affect intrastate aviation in Alaska because LAC is based in Anchorage, Alaska and operates throughout the state.

The FAA disagrees. LAC did not include in its comment any information to suggest that performance of the ECI on the propeller blades would affect service to remote Alaskan communities that are not available by other modes of transportation, while LAC's airplanes are out of service for the ECI of the taper bore. The FAA has determined that this AD would not have a significant negative impact on the availability of transportation services to a remotely located Alaskan community that is not serviced by other modes of transportation. Even if this AD did have a significant negative impact on the availability of LAC's transportation services to a remotely located Alaskan community not serviced by other modes of transportation, the safety concerns explained in this AD outweigh the benefits of making said transportation available.

Comment on Determining Manufacture Date of Affected Propeller Blades

LAC commented that, in reference to ''since new'' used in paragraph (g)(3) of the Required Actions, LAC has been advised by Collins Aerospace that the date code method of assigning S/Ns for propeller blades was not in effect for propeller blades until the late 1990s. As a result, LAC commented, each S/N must be manually researched from hand written production records, and a quick reference S/N database is not available. LAC also noted that this will make determining the blade date of manufacture problematic and time consuming.

The FAA acknowledges that the process to determine the propeller blade's date of manufacture may be time consuming. However, the FAA notes that paragraph (g)(3) of this AD assumes that a date record exists for each installed propeller blade that has been through overhaul activities because propeller maintenance records must comply with 14 CFR 43.11. The FAA did not change this AD as a result of this comment.

Request for Clarification on Installation Prohibition

LAC stated that, in reference to paragraph (h)(1) of the NPRM, Installation Prohibition, this AD should not apply to newly manufactured (–2A) propeller blades because those propeller blades are manufactured with an enhanced process to reduce the risk of failure. LAC also commented that paragraph (h)(2) of the NPRM, Installation Prohibition, would prohibit installation of a propeller blade unless that propeller blade has first passed the initial inspection required by paragraphs (g)(1) through (4) of this AD. LAC understood this installation prohibition to apply to propeller blades that were removed and installed for maintenance that is unrelated to the propeller blade inspection. LAC disagrees with the inclusion of this installation prohibition because propeller assemblies are routinely removed and replaced in the field for a variety of unrelated maintenance tasks where there may be limited tooling, propeller stands, or non-destructive test equipment. The added requirement to fully disassemble the propeller and inspect the blades before they are due for the initial inspection is an unnecessary burden on the operators, and logistically problematic.

The FAA disagrees with excluding newly manufactured propeller blades from the installation prohibition section of this AD for the same reasons explained in response to LAC's comment on excluding newly manufactured propeller blades from the applicability section of this AD. Regarding LAC's comment on removing and installing the propeller blade assembly for unrelated maintenance, the FAA agrees to clarify paragraph (h)(2) Installation Prohibition, of this AD to account for those circumstances. The FAA acknowledges that a propeller assembly may require specific maintenance activity to remove the propeller blade assembly and control assembly from the aircraft, but not require the rotating barrel and propeller blade assembly to be disassembled or ''split,'' where the propeller blades are not readily accessible for the inspection. The FAA added a note to paragraph

(h)(2) of this AD clarifying that operators may install a propeller assembly with a propeller blade identified in paragraphs (g)(1) through (3) of this AD if the propeller blade assembly is not disassembled and the propeller blades are not yet due for an ECI as required by paragraphs (g)(1) through (4) of this AD.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adoption of the AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for the addition of a note to paragraph (h) Installation Prohibition, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Hamilton Sundstrand ASB 54H60–61–A154, Revision 1, dated May 29, 2020. This ASB identifies the affected propeller models and specifies procedures for performing an ECI of the propeller blade taper bore.

The FAA also reviewed Hamilton Sundstrand ASB 54H60–61–A155, dated May 29, 2020. This ASB also identifies affected propeller models and specifies procedures for performing an expanded ECI of the propeller blade taper bore. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Interim Action

The FAA considers this AD to be an interim action. This unsafe condition is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Costs of Compliance

The FAA estimates that this AD affects 212 propellers installed on 53 aircraft of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
ECI all propeller blades installed on propeller	16 work-hours × $85 per hour = $1,360	$700	$2,060	$436,720
Report results of ECI	1 work-hour × $85 per hour = $85	0	85	18,020

The FAA estimates the following costs to do any necessary replacement that would be required based on the results of the inspection. The agency has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace propeller blade	1 work-hour × $85 per hour = $85	$63,500	$63,585

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.

To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If

the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA published an Initial Regulatory Flexibility Analysis (IRFA) (86 FR 40376, July 28, 2021) for Docket No. FAA–2021–0032; Project Identifier AD–2020–01314–P to aid the public in commenting on the potential impacts to small entities. The FAA considered the public comments in developing both the final rule and this Final Regulatory Flexibility Analysis (FRFA). A FRFA must contain the following:

(1) A statement of the need for, and objectives of, the rule;

(2) A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the final rule as a result of such comments;

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the SBA in response to the proposed rule, and a detailed statement of any change made in the final rule as a result of the comments;

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1. Need for and Objectives of the Rule

This AD was prompted by a report of the separation of a 54H60 model propeller blade installed on a USMCR KC–130T airplane during a flight in July 2017. It requires initial and repetitive ECIs of all propeller blades installed on Hamilton Sundstrand 54H model propellers with a propeller hub, model 54H60, installed. Additionally, this final rule AD requires replacement of any propeller blade that fails inspection. The FAA is issuing this AD to detect cracking in the propeller blade taper bore. The unsafe condition, if not addressed, could result in failure of the propeller blade, blade separation, and loss of the airplane.

The FAA's legal basis for this AD is discussed in detail under the ''Authority for this Rulemaking'' section.

2. Significant Issues Raised in Public Comments

The FAA published an IRFA for Docket No. FAA–2021–0032; Project Identifier AD–2020–01314–P and requested comments.

LAC commented that the proposed AD underestimated the cost of compliance, and determined that the true cost on U.S. operators will be approximately $1,948,280 per inspection interval. LAC also determined that the total compliance cost over the typical life of a new propeller (4 inspections) is expected to be $7,793,120, not including lost revenue due to the aircraft being out of service. LAC also noted that Derco, the only supplier of new manufactured replacement propeller blades, was currently quoting $68,000 per propeller blade, and would not guarantee or specify any delivery dates or quantities available.

The FAA disagrees with updating the estimated costs of this AD. The cost analysis in AD rulemaking actions typically includes only the costs associated with complying with the AD, and does not include secondary costs. The FAA's cost estimate includes the work hours and parts costs to inspect and replace the parts. Using the compliance cost estimate that LAC provided in its public comment to the proposed AD ($9,190 to inspect all propeller blades installed on each propeller, or $36,760 to inspect an airplane with four propellers), the FAA calculated the total compliance costs of this AD on 15 small businesses that own and operate 27 airplanes at $992,520 ($36,760 × 27). Eight small businesses that own and operate one airplane would incur $36,760. The compliance costs of one small entity with five airplanes would be $183,800. The average compliance costs of this AD on small entities would be $66,168 ($992,520/15).

The FAA estimated the revenue impact of complying with this AD's requirements on these 15 small entities would vary from under 1 percent (0.12 percent) of affected companies' annual revenues to approximately 2 percent (1.69 percent) of their annual revenues.

LAC also noted that the proposed AD will have a significant economic impact on a substantial number of small entities because the majority of civil operators affected by this AD are categorized by the SBA as ''Small Businesses'' having fewer than 500 employees.

The FAA identified 33 airplanes with 54H model propellers having propeller hub, model 54H60, installed, that are owned and operated by 16 private entities and fall under the 481112 NAICS Code (Scheduled Freight Air Transportation) with a small business size standard of a maximum of 1,500 employees to be considered small business. Six of these 33 airplanes are registered to LAC, affiliated with the Lynden Incorporated, which, with 2,500 employees on its payroll, is not a small entity per the SBA definition. The FAA considered all other entities that own and operate similar airplanes as small entities since they all employ less than 1,500 employees. The FAA also estimated the revenue impact of complying with this AD's requirements would vary from under 1 percent (0.12 percent) of affected companies' annual revenues to approximately 2 percent (1.69 percent) of their annual revenues. The FAA determined that no changes are necessary to this AD as a result of these comments.

3. Response to SBA Comments

The Chief Counsel for Advocacy of the SBA did not file any comments in response to the proposed rule. Thus, the FAA did not make any changes to this AD.

4. Small Entities to Which the Rule Will Apply

FAA used the definition of small entities in the RFA for this analysis. The RFA defines small entities as small businesses, small governmental jurisdictions, or small organizations. In 5 U.S.C. 601(3), the RFA defines ''small business'' to have the same meaning as ''small business concern'' under section 3 of the Small Business Act. The Small Business Act authorizes the SBA to define ''small business'' by issuing regulations.

SBA (2019) has established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS).[1] These size standards generally define small businesses based on the number of employees or annual receipts.

The FAA identified 53 airplanes with 54H model propellers having propeller hub, model 54H60, installed. These 53 airplanes are registered to 20 entities. Of these 53 airplanes, 20 are registered to

[1] Small Business Administration (SBA). 2019. Table of Size Standards. Effective August 12, 2019. *https://www.sba.gov/document/support--table-size-standards.*

United States Government entities, including the U.S. Customs and Border Protection, which operates 13 of these airplanes. The FAA determined that these government entities are not small businesses or other forms of small entity.

The remaining 33 airplanes are owned and operated by 16 private entities. All of these private entities fall under the 481112 NAICS Code (Scheduled Freight Air Transportation) with a small business size standard of a maximum of 1,500 employees to be considered small business.

Six of these 33 airplanes are registered to LAC, affiliated with the Lynden Incorporated, which, with 2,500 employees on its payroll, is not a small entity per the SBA definition. The FAA considered all other entities that own and operate similar airplanes as small entities since they all employ less than 1,500 employees. Therefore, the FAA estimated that this AD would impact 15 small entities.

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Small entities will incur a new reporting requirement as a result of this AD. Results of the ECI required by paragraphs (g)(1) through (5) of this AD must be reported in accordance with the Accomplishment Instructions, paragraph 3.C.(6), of Hamilton Sundstrand ASB 54H60–61–A154, Revision 1, dated May 29, 2020. The FAA also estimated that there would be compliance costs due to the new requirements as discussed in this preamble.

Using the compliance cost estimate that LAC provided in its public comment to the proposed AD ($9,190 to inspect all propeller blades installed on each propeller, or $36,760 to inspect an airplane with four propellers), the total compliance costs of this AD on 15 small businesses that own and operate 27 airplanes would be $992,520 ($36,760 × 27). Eight small businesses that own and operate one airplane would incur $36,760. The compliance costs of one small entity with five airplanes would be $183,800. The average compliance costs of this AD on small entities would be $66,168 ($992,520/15).

The FAA estimated the revenue impact of complying with this AD's requirements on these 15 small entities would vary from under 1 percent (0.12 percent) of affected companies' annual revenues to approximately 2 percent (1.69 percent) of their annual revenues.

To the extent that small entities provide more unique services or serve markets with less competition, they may also be able to pass on costs in the form of price increases. However, the FAA assumed that none of these small entities would be able to pass these compliance costs to their customers in terms of higher prices.

6. Significant Alternatives Considered

As part of the FRFA, the FAA is required to consider regulatory alternatives that may be less burdensome.

The FAA did not find any significant regulatory alternatives that would still accomplish the safety objectives of this AD.

Regulatory Findings

The FAA has determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2020–12–07, Amendment 39–21142 (85 FR 36145, June 15, 2020); and

■ b. Adding the following new airworthiness directive:

2022–08–10 Hamilton Sundstrand Corporation: Amendment 39–22013; Docket No. FAA–2021–0032; Project Identifier AD–2020–01314–P.

(a) Effective Date

This airworthiness directive (AD) is effective May 27, 2022.

(b) Affected ADs

This AD replaces AD 2020–12–07, Amendment 39–21142 (85 FR 36145, June 15, 2020).

(c) Applicability

This AD applies to all Hamilton Sundstrand Corporation (Hamilton Sundstrand) 54H model propellers with a propeller hub, model 54H60, installed.

Note to paragraph (c): Hamilton Sundstrand references propeller model 54H60 in Hamilton Sundstrand Alert Service Bulletin (ASB) 54H60–61–A154, Revision 1, dated May 29, 2020. These are model 54H propellers with a 54H60 model propeller hub.

(d) Subject

Joint Aircraft System Component (JASC) Code 6111, Propeller Blade Section.

(e) Unsafe Condition

This AD was prompted by the separation of a propeller blade that resulted in the loss of an airplane and 17 fatalities. The FAA is issuing this AD to detect cracking in the propeller blade taper bore. The unsafe condition, if not addressed, could result in failure of the propeller blade, blade separation, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For propellers with an installed propeller blade having a blade serial number (S/N) below 813320, that has not been overhauled within the past sixty (60) months, within one year or 500 flight hours (FHs) after July 20, 2020 (the effective date of AD 2020–12–07), whichever occurs first, perform an eddy current inspection (ECI) of all blades installed on the propeller.

(2) For propellers with an installed propeller blade having a blade S/N below 813320, that has been overhauled within the past sixty (60) months, within two years or 1,000 FHs after July 20, 2020 (the effective date of AD 2020–12–07), whichever occurs first, perform an ECI of all blades installed on the propeller.

(3) For propellers with an installed propeller blade, blade S/N 813320 and above, that has not been overhauled within ten years since new or since last overhaul, within one year or 500 FHs after the effective date of this AD, whichever occurs first, perform an ECI of all blades installed on the propeller.

(4) Perform the ECI of the propeller blades required by paragraphs (g)(1) through (3) of this AD in accordance with the Accomplishment Instructions, paragraph 3.C.(5), of both Hamilton Sundstrand ASB 54H60–61–A154, Revision 1, dated May 29, 2020, and of Hamilton Sundstrand ASB 54H60–61–A155, dated May 29, 2020.

(5) For all propellers identified in paragraphs (g)(1) through (3) of this AD, repeat the inspection required by paragraphs

(g)(1) through (4) of this AD at intervals not exceeding 3 years or 1,500 FHs, whichever comes first, from the previous inspection.

(6) If a propeller blade fails any inspection required by this AD, based on the criteria in Accomplishment Instructions, paragraph 3.C.(5)(g) of Hamilton Sundstrand ASB 54H60–61–A154, Revision 1, dated May 29, 2020, and paragraph 3.C.(5)(j) of Hamilton Sundstrand ASB 54H60–61–A155, dated May 29, 2020, remove the blade from service before further flight and replace with a blade eligible for installation.

(7) Report the results of the ECI required by paragraphs (g)(1) through (5) of this AD in accordance with the Accomplishment Instructions, paragraph 3.C.(6), of Hamilton Sundstrand ASB 54H60–61–A154, Revision 1, dated May 29, 2020.

(h) Installation Prohibition

(1) After the effective date of this AD, do not install onto any propeller a Hamilton Sundstrand propeller blade identified in paragraphs (g)(1) through (3) of this AD, unless the blade has first passed the initial inspection required by paragraphs (g)(1) through (4) of this AD.

(2) After the effective date of this AD, do not install any propeller assembly with a propeller blade identified in paragraphs (g)(1) through (3) of this AD onto any aircraft unless the propeller blades have first passed the initial inspection required by paragraphs (g)(1) through (4) of this AD.

Note to paragraph (h)(2): Operators may install a propeller assembly with a propeller blade identified in paragraphs (g)(1) through (3) of this AD if the propeller blade assembly is not disassembled and the propeller blades are not yet due for an ECI as required by paragraphs (g)(1) through (4) of this AD.

(i) Credit for Previous Actions

You may take credit for the initial ECI of a propeller blade required by paragraphs (g)(1) and (2) of this AD and the replacement of a propeller blade required by paragraph (g)(6) of this AD if the actions were completed before the effective date of this AD using Hamilton Sundstrand ASB 54H60–61–A154, dated August 26, 2019.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

For more information about this AD, contact Michael Schwetz, Aviation Safety Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7761; fax: (781) 238–7199; email: *9-AVS-AIR-BACO-COS@faa.gov*.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Hamilton Sundstrand Alert Service Bulletin (ASB) 54H60–61–A154, Revision 1, dated May 29, 2020.

(ii) Hamilton Sundstrand ASB 54H60–61–A155, dated May 29, 2020.

(3) For service information identified in this AD, contact Hamilton Sundstrand, 1 Hamilton Road, Windsor Locks, CT 06096–1010; phone: (877) 808–7575; email: *CRC@collins.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on April 7, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08539 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1169; Project Identifier AD–2021–01011–T; Amendment 39–22008; AD 2022–08–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–800 series airplanes. This AD was prompted by the determination that insufficient sealing may allow water to enter the lower lobe electronic equipment (EE) bay through the main deck floor structure at the rigid cargo barrier (RCB), which could cause damage to EE bay line replacement units (LRUs) in the E5 rack. This AD requires detailed inspections for the presence and condition of sealant at certain locations and applicable on-condition actions. This AD also requires replacing the moisture barrier tape at a certain location, replacing the weather seal at a certain location, and installing seat track fillers. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 27, 2022

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 27, 2022.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1169.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1169; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *courtney.k.tuck@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–800 series airplanes. The

NPRM published in the **Federal Register** on January 26, 2022 (87 FR 3946). The NPRM was prompted by the determination that insufficient sealing may allow water to enter the lower lobe EE bay through the main deck floor structure at the RCB, which could cause damage to EE bay LRUs in the E5 rack. In the NPRM, the FAA proposed to require detailed inspections for the presence and condition of sealant at certain locations and applicable on-condition actions. The NPRM also proposed to require replacing the moisture barrier tape at a certain location, replacing the weather seal at a certain location, and installing seat track fillers. The FAA is issuing this AD to address water ingress in the lower lobe EE bay, which could result in water damage to the air data inertial reference units and flight management computers during flight, leading to a complete loss of data to primary flight displays and electronic navigation functions, which could prevent continued safe flight and landing.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from Air Line Pilots Association, International (ALPA), Boeing, and an individual, who supported the NPRM without change.

The FAA received an additional comment from Aviation Partners Boeing (APB). The following presents the comment received on the NPRM and the FAA's response to the comment.

Effect of Winglets on Accomplishment of the Proposed Actions

APB stated that the installation of winglets per Supplemental Type Certificate (STC) ST00830SE does not affect compliance with the mandated actions in the proposed rule.

The FAA agrees with the commenter. Therefore, the installation of STC ST00830SE does not affect the ability to accomplish the actions required by this AD. The FAA has not changed this AD in this regard.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021. This service information specifies procedures for detailed inspections of the forward main deck cargo compartment floor to RCB, floor panel joints, drain troughs, seat track splices, and, for some airplanes, the lower lobe E5 rack drain pan shroud for sealant condition and application, and applicable on-condition actions. This service information also specifies procedures for replacing the main deck cargo door weather seal, replacing the moisture barrier tape on the forward main deck cargo compartment floor, and installing seat track fillers in the EE bay. On-condition actions include repair, removing existing sealant, and applying new sealant. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 7 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect sealant	Up to 12 work-hours × $85 per hour = Up to $1,020.	$0	Up to $1,020	Up to $7,140.
Remove/reinstall drain trough	Up to 15 hours × $85 per hour = Up to $1,275	Negligible	Up to $1,275	Up to $8,925.
Replace weather seal	Up to 7 work-hours × $85 per hour = Up to $595.	$9,680	Up to $10,275	Up to $71,925.
Replace barrier tape	Up to 20 work-hours × $85 per hour = Up to $1,700.	Negligible	Up to $1,700	Up to $11,900.
Install seat track filler	Up to 2 work-hours × $85 per hour = Up to $170.	Negligible	Up to $170	Up to $1,190.

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The agency has no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Install or replace sealant	26 work-hours × $85 per hour = $2,210	Negligible	$2,210

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

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2022–08–05 The Boeing Company: Amendment 39–22008; Docket No. FAA–2021–1169; Project Identifier AD–2021–01011–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–800 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the determination that insufficient sealing may allow water to enter the lower lobe electronic equipment (EE) bay through the main deck floor structure at the rigid cargo barrier, which could cause damage to EE bay line replacement units in the E5 rack. The FAA is issuing this AD to address water ingress in the lower lobe EE bay, which could result in water damage to the air data inertial reference units and flight management computers during flight, leading to a complete loss of data to primary flight displays and electronic navigation functions, which could prevent continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1401, dated April 27, 2021, which is referred to in Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time column of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021, uses the phrase ''the original issue date of Requirements Bulletin 737–53A1401 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(j) Related Information

For more information about this AD, contact Courtney Tuck, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3986; email: *courtney.k.tuck@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Requirements Bulletin 737–53A1401 RB, dated April 27, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on April 4, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08543 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1078; Project Identifier MCAI–2020–01574–R; Amendment 39–22014; AD 2022–08–11]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bell Textron Canada Limited Model 429 helicopters. This AD was prompted by in-service reports of the loss of display and subsequent recovery of certain display units (DUs). This AD requires revising the existing rotorcraft flight manual supplement (RFMS) for your helicopter and disabling the traffic alert and collision avoidance system (TCAS) POP–UP feature for certain DUs. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 27, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of May 27, 2022.

ADDRESSES: For service information identified in this final rule, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1078.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1078; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the Transport Canada AD, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, COS Program Management Section, FAA, Operational Safety Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to Bell Textron Canada Limited Model 429 helicopters, serial numbers 57001 through 57369 inclusive, 57371, and 57373. The NPRM published in the **Federal Register** on December 28, 2021 (86 FR 73708; corrected January 10, 2022 (87 FR 1083)). In the NPRM, the FAA proposed to require revising the existing RFMS for your helicopter and disabling the TCAS POP–UP feature for certain DUs. The NPRM was prompted by Transport Canada AD CF–2020–18R1, dated November 27, 2020 (Transport Canada AD CF–2020–18R1), issued by Transport Canada, which is the aviation authority for Canada, to correct an unsafe condition for Bell Textron Canada Limited Model 429 helicopters, serial numbers 57001 through 57369, 57371, and 57373. Transport Canada advises that it has received in-service reports of the loss of display and subsequent recovery of the DU manufactured by Rogerson Kratos (RK). During an instrument flight rules approach, a Bell Textron Canada Limited Model 429 helicopter lost its center DU display, which then rebooted, and subsequently lost its right-hand side (RHS) DU display, which then also rebooted. Investigation revealed that the DUs' power cycle occurred while in Map-Mode, which was caused by the RK DUs' limited processing capability for excessive null waypoints generated by the Garmin GTN 750/650 GPS/NAV/COMM/MFD.

Transport Canada also advises that the use of Map-Mode to the center DU should be limited only for Bell Textron Canada Limited Model 429 helicopters equipped with RK DUs and Garmin GTN 750/650 main software version 6.21 or later and that the use of Map-Mode should be prohibited on both the RHS DU and left-hand side DU, if installed. In addition, Transport Canada advises that a new emergency and malfunction procedure in the event of center DU failure should be implemented. If not addressed, a DU power cycle occurring during flight and consequent momentary loss of display information on the primary flight display and other DUs could result in the unexpected loss of display of important flight parameters to the pilots, including attitude, approach, airspeed, altitude, flight director information, navigation system cues, as well as engine and rotor drive system indications.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter, Bell Textron Canada Limited. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise Figures 1 and 2 to Paragraph (g) To Match the RFMS

Bell Textron Canada Limited requested that the limitations specified in figures 1 and 2 to paragraph (g) of the proposed AD be revised to reflect the limitations identified in Bell Alert Service Bulletin 429–20–51, Revision B, dated July 17, 2021; and Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revision 7, dated December 14, 2021. The commenter noted that the unsafe condition identified in the NPRM is only present when Garmin GTN 650/750 main software version 6.21 or later is installed because these software versions introduce an increased number of waypoints that can be displayed, which is beyond the memory capability of the RK DU. In addition, the commenter explained that the Garmin main software version is obvious to the pilot because it is displayed on the GTN 650/750 ''splash''screen when the DUs are powered-up and can be easily accessed prior to flight through the GTN 650/750 configuration pages.

The FAA partially agrees with the commenter's request. The FAA agrees with revising the limitations specified in figures 1 and 2 to paragraph (g) of this AD to reflect the Garmin GTN 650/750 main software versions specified in Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revision 7, dated December 14, 2021, because the unsafe condition is limited to Garmin GTN 650/750 main software version 6.21 or later, and the flight crew can determine the software version from the DUs and not from memory or running a diagnostic program. The FAA has revised figures 1 and 2 to paragraph (g) of this AD accordingly. The FAA notes that Bell Alert Service Bulletin

429–20–51, Revision B, dated July 17, 2021, refers to an older revision of the Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, which does not include all of the clarifying information regarding the affected manufacturer and software versions.

Request To Revise Figure 3 to Paragraph (g) To Specify the RK DU Configuration

Bell Textron Canada Limited requested that figure 3 to paragraph (g) of the proposed AD be revised to specify that the revision to the Emergency and Malfunction Procedures (section 3) of the existing RFMS applies to a center DU with the RK DU configuration. The commenter explained that Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revision 7, dated December 14, 2021, included a revision to Section 3–14–B., CENTER DU FAILURE, to clarify that the Emergency and Malfunction Procedure applied only to the RK DU configuration.

The FAA agrees with the commenter's request and has revised paragraph (g) of this AD and figure 3 to paragraph (g) of this AD to specify that the Emergency and Malfunction Procedures apply to a center DU with the RK DU configuration. The FAA contacted Transport Canada, the State of Design Authority for Bell Textron Canada Limited Model 429 helicopters, and confirmed that the Emergency and Malfunction Procedures are applicable only to a center DU with the RK DU configuration.

Request To Revise Note 1 to Paragraph (g) To Refer to a Later Revision of the RFMS

Bell Textron Canada Limited requested that Note 1 to paragraph (g) be revised to refer to only Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revision 7, dated December 14, 2021. The commenter explained that this revision level provides additional clarifying information regarding the manufacturer and software versions affected by the unsafe condition identified in the NPRM.

The FAA agrees with the commenter's request for the reason provided by the commenter and because the FAA has additionally agreed to certain changes in the information presented in figures 1, 2, and 3 to paragraph (g) of this AD in response to the commenter's previous comments regarding the RFMS revision. In the proposed AD Note 1 to paragraph (g) was as follows: ''Note 1 to paragraph (g): The information in the ''CENTER DU FAILURE' specified in figure 3 to paragraph (g) of this AD can be found in Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revisions 3, 4, 5, and 6.'' In this AD the FAA revised Note 1 to paragraph (g) to refer to Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revision 7, dated December 14, 2021, and to include the pertinent changes that resulted from the other Bell Textron Canada Limited comments previously discussed.

Changes Since the NPRM Was Issued

After the NPRM was issued, Transport Canada issued Transport Canada AD CF–2020–18R2, dated January 27, 2022 (Transport Canada AD CF–2020–18R2), which superseded Transport Canada AD CF–2020–18R1. Transport Canada AD CF–2020–18R2, mandates incorporation of Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revision 7, dated December 14, 2021, which specifies disabling the TCAS POP–UP feature for certain DUs. That action was included in the proposed AD requirements, and in the NPRM preamble, was identified in the Differences Between this Proposed AD and the Transport Canada AD section because it was not included in Transport Canada AD CF–2020–18R1 but was included in the proposed AD requirements. That difference has been removed from this final rule.

Conclusion

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data, considered the comments received, and determined that, except for the changes described previously, air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bell Alert Service Bulletin 429–20–51, Revision B, dated July 17, 2021, which specifies procedures for disabling the TCAS POP–UP feature for certain DUs. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Differences Between This AD and the Transport Canada AD

Transport Canada AD CF–2020–18R2 requires operators to ''advise all flight crews'' of the changes introduced by the RFMS revision. However, this AD does not specifically require that action. 14 CFR 91.9 requires that no person may operate a civil aircraft without complying with the operating limitations specified in the RFMS. Therefore, including a requirement in this AD to operate the helicopter according to the revised RFMS would be redundant and unnecessary. Further, compliance with such a requirement in an AD would be impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the helicopter in such a manner would be unenforceable. The flight manual supplement changes in this AD also apply to the emergency and malfunction procedures section of the existing RFMS for your helicopter. FAA regulations mandate compliance only with the operating limitations section of the flight manual. Nonetheless, the FAA recommends that flight crews of the helicopters listed in the applicability operate in accordance with the revised emergency and malfunction procedures specified in this AD.

Costs of Compliance

The FAA estimates that this AD affects 88 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Revising the existing RFMS for your helicopter takes about 1 work-hour for an estimated cost of $85 per helicopter and $7,480 for the U.S. fleet.

Disabling the TCAS POP–UP feature for your helicopter takes about 0.5 work-hours for an estimated cost of $43 per helicopter and $3,784 for the U.S. fleet.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing

regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2022–08–11 Bell Textron Canada Limited: Amendment 39–22014; Docket No. FAA–2021–1078; Project Identifier MCAI–2020–01574–R.

(a) Effective Date

This airworthiness directive (AD) is effective May 27, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 429 helicopters, certificated in any category, serial numbers 57001 through 57369 inclusive, 57371, and 57373.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 3100, Indicating/Recording System.

(e) Unsafe Condition

This AD was prompted by in-service reports of the loss of display and subsequent recovery of certain display units (DUs). The FAA is issuing this AD to address a DU power cycle occurring during flight and consequent momentary loss of display information on the primary flight display and other DUs, which if not addressed, could result in the unexpected loss of display of important flight parameters to the pilots, including attitude, approach, airspeed, altitude, flight director information, navigation system cues, as well as engine and rotor drive system indications.

(f) Compliance

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

(g) Revising the Rotorcraft Flight Manual Supplement (RFMS)

Within 30 days after the effective date of this AD: Revise the Types of Operation—Limitations (section 1–3–A.) of the existing RFMS for your helicopter to include the information in the ''Limitations'' specified in figure 1 to paragraph (g) of this AD, revise the Configuration (section 1–5.) of the existing RFMS for your helicopter to include the information in the ''Configuration'' specified in figure 2 to paragraph (g) of this AD, and revise the Emergency and Malfunction Procedures (section 3) of the existing RFMS for your helicopter to include the information in the ''CENTER DU FAILURE (RK CONFIGURATION)'' specified in figure 3 to paragraph (g) of this AD.

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Figure 1 to paragraph (g)—*Limitations revision*

Figure 1 to paragraph (g) – *Limitations revision*

1-3-A. LIMITATIONS

Safe Taxi® and Chart View, if installed, shall not be used as primary means for flight crews to orient themselves on the airport surface.

Use of the GTN for primary navigation for latitudes above 89.00°N and below 89.00°S is not authorized.

With Garmin main software 6.21 or later, MAP mode on the Pilot and Co-pilot (if installed) Rogerson Kratos (RK) DU shall not be selected as this may cause a power cycle of the DU.

With Garmin main software 6.21 or later, MAP mode on the center RK DU shall not be selected during a DME Arc approach, as this may cause a power cycle of the DU.

With Garmin main software 6.21 or later and optional search pattern kit enabled, MAP mode on the center RK DU shall not be selected during search pattern operations. Excessive search pattern legs in DU MAP mode may cause a power cycle of the DU.

The SD card or Flight Stream 510 (MMC) shall be present in each unit at all times.

Demo mode shall not be used in flight.

Figure 2 to paragraph (g)—*Configuration revision*

Figure 2 to paragraph (g) – *Configuration revision*

1-5. CONFIGURATION

Garmin GTN 750/650 main software shall be Version 4.00 with GPS software 5.00 or main software 6.21 with GPS software 5.2, or main software 6.62 with GPS software 5.2.

Flight Stream 510, if installed, shall be version 2.32 or later.

Both GTN units shall have the same software versions.

With Garmin main software 6.21 or later, TCAS POP-UP mode shall be DISABLED on the Rogerson Kratos (RK) DU.

Figure 3 to paragraph (g)—*Emergency and Malfunction Procedures revision*

Figure 3 to paragraph (g) – *Emergency and Malfunction Procedures revision*

3-14-B. CENTER DU FAILURE
(RK CONFIGURATION)

- INDICATIONS:

  DU screen momentarily goes blank.

  Pilot and Co-pilot (if installed) DU goes into composite mode.

- PROCEDURE:

  NOTE

  MAP mode on center DU is defaulted ON with Weather Radar (if installed).

  Center DU — Deselect MAP mode.

  Pilot/Copilot DU — Select flight mode, as desired.

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Note 1 to paragraph (g): The information in the ''Limitations'' specified in figure 1 to paragraph (g), ''Configuration'' specified in figure 2 to paragraph (g), and ''CENTER DU FAILURE (RK CONFIGURATION)'' specified in figure 3 to paragraph (g) of this AD can be found in Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revision 7, dated December 14, 2021.

(h) Disabling the Traffic Alert and Collision Avoidance System (TCAS) POP–UP Feature

Within 30 days after the effective date of this AD: Disable the TCAS POP–UP mode, including those helicopters equipped with the TCAS kit, in the parameter setup page on all RK DUs, in accordance with paragraph 3. of the Accomplishment Instructions of Bell Alert Service Bulletin 429–20–51, Revision B, dated July 17, 2021.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, FAA, Operational Safety Branch, Compliance & Airworthiness Division, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *Darren.Gassetto@faa.gov.*

(2) The subject of this AD is addressed in Transport Canada AD CF–2020–18R2, dated January 27, 2022. You may view the Transport Canada AD at *https://www.regulations.gov* in Docket No. FAA–2021–1078.

(3) Bell 429 Rotorcraft Flight Manual Supplement BHT–429–FMS–19, Revision 7, dated December 14, 2021, which is not incorporated by reference, contains additional information about the subject of this AD. This service information is available at the contact information specified in paragraphs (k)(3) and (4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bell Alert Service Bulletin 429–20–51, Revision B, dated July 17, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on April 5, 2022.

Derek Morgan,

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

[FR Doc. 2022–08563 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

RIN 1601–ZA21

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S.

Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of temporary travel restrictions.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (''Secretary''), after consulting with interagency partners, to continue to temporarily restrict travel by certain noncitizens into the United States at land ports of entry, including ferry terminals, (''land POEs'') along the United States-Mexico border. These restrictions only apply to noncitizens who are neither U.S. nationals nor lawful permanent residents (''noncitizen non-LPRs''). Under the temporary restrictions, DHS will allow the processing for entry into the United States of only those noncitizen non-LPRs who are fully vaccinated against COVID–19 and can provide proof of being fully vaccinated against COVID–19 upon request at arrival. According to the Centers for Disease Control and Prevention (''CDC''), vaccines remain the most effective public health measure to protect people from severe illness or death from COVID–19, slow the transmission of COVID–19, and reduce the likelihood of new COVID–19 variants emerging. These restrictions help protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities. These restrictions provide for limited exceptions, largely consistent with the limited exceptions currently available with respect to COVID–19 vaccination in the international air travel context.

DATES: These restrictions will become effective at 12:00 a.m. Eastern Daylight Time (EDT) on April 22, 2022, and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes in Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.

FOR FURTHER INFORMATION CONTACT: Greta Campos, Office of Field Operations, U.S. Customs and Border Protection (CBP), 202–344–2775.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, the Department of Homeland Security (''DHS'') published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPRs into the United States at land POEs along the United States-Mexico border to ''essential travel,'' as further defined in that document.[1] The March 24, 2020 Notification described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak, continued transmission, and spread of the virus associated with COVID–19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico posed a specific threat to human life or national interests. Under the March 24, 2020 Notification, DHS continued to allow certain categories of travel, described as ''essential travel.'' Essential travel included travel to attend educational institutions, travel to work in the United States, travel for emergency response and public health purposes, and travel for lawful cross-border trade. Essential travel also included travel by U.S. citizens and lawful permanent residents returning to the United States.

From March 2020 through October 2021, in consultation with interagency partners, DHS reevaluated and ultimately extended the restrictions on non-essential travel each month. On October 21, 2021, DHS extended the restrictions until 11:59 p.m. EST on January 21, 2022.[2] In that document, DHS acknowledged that notwithstanding the continuing threat to human life or national interests posed by COVID–19—as well as then-recent increases in case levels, hospitalizations, and deaths due to the Delta variant—COVID–19 vaccines are effective against Delta and other known COVID–19 variants. These vaccines protect people from becoming infected with and severely ill from COVID–19 and significantly reduce the likelihood of hospitalization and death. DHS also acknowledged the White House COVID–19 Response Coordinator's September 2021 announcement regarding the United States' plans to revise standards and procedures for incoming international air travel to enable the air travel of travelers fully vaccinated against COVID–19 beginning in early November 2021.[3] DHS further stated that the Secretary intended to do the same with respect to certain travelers seeking to enter the United States from Mexico and Canada at land POEs to align the treatment of different types of travel and allow those who are fully vaccinated against COVID–19 to travel to the United States, whether for essential or non-essential reasons.[4]

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and CDC,[5] DHS announced that beginning November 8, 2021, non-essential travel of noncitizen non-LPRs would be permitted through land POEs, provided that the traveler is fully vaccinated against COVID–19 and can provide proof of full COVID–19 vaccination status upon request.[6] DHS also announced in October 2021 that beginning in January 2022, inbound noncitizen non-LPRs traveling to the United States via land POEs—whether for essential or non-essential reasons—would be required to be fully vaccinated against COVID–19 and provide proof of full COVID–19 vaccination status. In making this announcement, the Department provided fair notification of the anticipated changes, thereby allowing ample time for noncitizen non-LPR essential travelers to get fully vaccinated against COVID–19.[7]

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[1] 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPR persons into the United States at land POEs along the United States-Canada border to ''essential travel,'' as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

[2] *See* 86 FR 58216 (Oct. 21, 2021) (extending restrictions for the United States-Mexico border); 86 FR 58218 (Oct. 21, 2021) (extending restrictions for the United States-Canada border).

[3] *See* Press Briefing by Press Secretary Jen Psaki (Sept. 20, 2021), *https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/20/press-briefing-by-press-secretary-jen-psaki-september-20-2021/* (''As was announced in a call earlier today . . . [w]e — starting in . . . early November [will] be putting in place strict protocols to prevent the spread of COVID–19 from passengers flying internationally into the United States by requiring that adult foreign nationals traveling to the United States be fully vaccinated.'').

[4] *See* 86 FR 58218; 86 FR 58216.

[5] Changes to requirements for travel by air were implemented by, *inter alia,* Presidential Proclamation 10294 of October 25, 2021, 86 FR 59603 (Oct. 28, 2021) (''Presidential Proclamation 10294''), and a related CDC order, 86 FR 61224 (Nov. 5, 2021) (''CDC Order''). *See also* CDC, *Requirement for Proof of Negative COVID–19 Test or Recovery from COVID–19 for All Air Passengers Arriving in the United States, https://www.cdc.gov/quarantine/pdf/Global-Testing-Order-10-25-21-p.pdf* (Oct. 25, 2021); *Requirement for Airlines and Operators to Collect Contact Information for All Passengers Arriving into the United States, https://www.cdc.gov/quarantine/pdf/CDC-Global-Contact-Tracing-Order-10-25-2021-p.pdf* (Oct. 25, 2021). CDC later amended its testing order following developments related to the Omicron variant. *See* CDC, *Requirement for Proof of Negative COVID–19 Test Result or Recovery from COVID–19 for All Airline Passengers Arriving into the United States, https://www.cdc.gov/quarantine/pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf* (Dec. 2, 2021).

[6] *See* 86 FR 72843 (Dec. 23, 2021) (describing the announcement with respect to Mexico); 86 FR 72842 (Dec. 23, 2021) (describing the announcement with respect to Canada).

[7] *See* DHS, DHS Releases Details for Fully Vaccinated, Non-Citizen Travelers to Enter the U.S. at Land and Ferry Border Crossings, *https://www.dhs.gov/news/2021/10/29/dhs-releases-details-fully-vaccinated-non-citizen-travelers-enter-*

On December 14, 2021, at DHS's request, CDC provided a memorandum to DHS describing the current status of the COVID–19 public health emergency. The CDC memorandum warned of ''case counts and deaths due to COVID–19 continuing to increase around the globe and the emergence of new and concerning variants,'' and emphasized that ''[v]accination is the single most important measure for reducing risk for SARS–CoV–2 transmission and avoiding severe illness, hospitalization, and death.'' [8] Consistent with these considerations and in line with DHS's October 2021 announcement, CDC recommended that proof of COVID–19 vaccination requirements be expanded to cover both essential and non-essential noncitizen non-LPR travelers.

In support of this conclusion, CDC cited studies indicating that individuals vaccinated against COVID–19 are five times less likely to be infected with COVID–19 and more than eight times less likely to require hospitalization than those who are unvaccinated. Conversely, unvaccinated people are 14 times more likely to die from COVID–19 than those who are vaccinated.[9] Per CDC, ''proof of vaccination of travelers helps protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities. Border security and transportation security work is part of the Nation's critical infrastructure and presents unique challenges for ensuring the health and safety of personnel and travelers.'' [10] In a January 14, 2022 update, CDC confirmed its prior recommendation. Specifically, CDC noted the ''rapid increase'' of COVID–19 cases across the United States that have contributed to high levels of community transmission and increased rates of new hospitalizations and deaths. According to CDC, between January 5 and January 11, 2022, the seven-day average for new hospital admissions of patients with confirmed COVID–19 increased by 24 percent over the prior week, and the seven-day average for new COVID–19-related deaths rose to 2,991, an increase of 33.7 percent compared to the prior week. CDC emphasized that this increase had exacerbated the strain on the United States' healthcare system and again urged that ''[v]accination of the broadest number of people best protects all individuals and preserves the United States' critical infrastructure, including healthcare systems and essential workforce.'' CDC thus urged ''the most comprehensive requirements possible for proof of vaccination'' and specifically recommended against exceptions to travel restrictions for specific worker categories as a public health matter.[11]

Given these recommendations, and after consultation with interagency partners and consideration of all relevant factors, including economic considerations, DHS announced the decision of the Secretary to temporarily restrict travel by noncitizen non-LPRs into the United States at land POEs along the United States-Mexico border by requiring proof of COVID–19 vaccination upon request at arrival.[12] This requirement was put in place at 12:00 a.m. EST on January 22, 2022 and will remain in effect until 11:59 p.m. EDT on April 21, 2022, unless amended or rescinded prior to that time.

CDC's Public Health Assessment and Recommendation To Continue COVID–19 Vaccination Requirement for Entry of Noncitizen Non-LPR Travelers

In considering whether to extend the travel restrictions, DHS solicited, and CDC provided to DHS, an updated public health assessment and recommendations regarding the DHS requirement for noncitizen non-LPRs to be fully vaccinated and to provide proof of COVID–19 vaccination for entry at land POEs. CDC sent a memorandum to the Commissioner of U.S. Customs and Border Protection on March 21, 2022 with its recommendations.[13] CDC reiterated that vaccination protects the public from severe illness, including deaths and hospitalizations.[14] Of note, a recent CDC study found that, for those people hospitalized with COVID–19, severe outcomes, as measured by length of hospital stay and number of intensive care unit stays, appeared lower at the time when the Omicron variant was initially surging than during previous periods of high transmission associated with previous variants—something that CDC attributed in part to wider vaccination coverage and up-to-date boosters.[15] This is consistent with CDC's assessment that vaccines remain the most effective public health measure to protect people from severe illness or death from COVID–19, slow transmission of COVID–19, and reduce the likelihood of new COVID–19 variants emerging.[16]

CDC also noted that the U.S. Government's actions and guidance in response to COVID–19 have evolved over the course of the pandemic as more scientific information has become available. During earlier phases of the pandemic, pharmaceutical interventions were unavailable, and the United States had to instead rely on largely nonpharmaceutical interventions, including limits on gatherings and school closures, masking, and testing. Expanded epidemiologic data, advances in scientific knowledge, and the availability of pharmaceutical interventions (both vaccines and effective treatments), however, have permitted many of those early actions to be dialed back in favor of a more nuanced and narrowly tailored set of tools that provide a less burdensome means of preventing and controlling COVID–19. In CDC's judgment, maintaining high vaccination coverage is essential to sustaining the use of less burdensome measures. To ensure sustained vaccine coverage, CDC recommends continuing both domestic efforts to increase vaccine uptake (primary series and booster doses) among U.S. residents and measures to ensure high rates of vaccination coverage among persons entering the United States.[17]

Echoing prior assessments, CDC's March 21, 2022 recommendation ''encourages continued implementation of comprehensive requirements for proof of vaccination for *all* [noncitizen non-LPRs] seeking entry into the United States,'' whether by land or by air.[18] CDC also once again recommended a ''comprehensive'' proof-of-vaccination

us-land-and-ferry (Oct. 29, 2021); DHS, Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals, *https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals* (updated Jan. 20, 2022); *see also* DHS, Frequently Asked Questions: Guidance for Travelers to Enter the U.S., *https://www.dhs.gov/news/2021/10/29/frequently-asked-questions-guidance-travelers-enter-us* (updated Jan. 20, 2022).

[8] *See* Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders (Dec. 14, 2021).

[9] *Id.*

[10] *Id.*

[11] Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders—Addendum (Jan. 18, 2022).

[12] *See* 87 FR 3425 (Jan. 24, 2022); 87 FR 3429 (Jan. 24, 2022) (parallel Canada notification).

[13] *See* Memorandum from CDC to CBP, Update: Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders under Title 19 (March 21, 2022).

[14] *See* Memorandum from CDC to CBP (March 21, 2022).

[15] *COVID Data Tracker Weekly Review: Interpretive Summary for February 11, 2022,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/02112022.html* (Feb. 11, 2022); *see* Memorandum from CDC to CBP (March 21, 2022).

[16] COVID–19 Vaccines Work, December 23, 2021. *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html* (accessed March. 22, 2022).

[17] *See* Memorandum from CDC to CBP (March 21, 2022).

[18] *Id.*

requirement and recommended against ''further exceptions for specific worker categories at this time,'' as global vaccination rates continue to rise.[19]

Of particular importance to this analysis, COVID–19 vaccines—which according to CDC are ''the single most important measure'' for responding to COVID–19 [20]—are widely available and have been increasingly available for months. As of April 8, 2022, in Canada, 81.39 percent of the entire population was fully vaccinated against COVID–19, while 85.59 percent of individuals five years and older are fully vaccinated against COVID–19.[21] According to the U.S. Department of State, as of March 28, 2022, Mexico administered at least one vaccine dose to 85.5 million people (90 percent of the adult target population) and fully vaccinated 79.6 million (87.8 percent of the adult target population). Approximately 61.8 percent of Mexico's total population is fully vaccinated.

On April 14, 2022, DHS asked CDC whether CDC's March 21, 2022 recommendations had changed over the preceding three weeks. CDC responded that its recommendations had not changed. CDC had reviewed the available data and concluded that its recommendations remain the same. CDC wrote that it ''encourages continued implementation of comprehensive requirements for proof of vaccination for all [noncitizen non-LPRs] seeking entry into the United States for travel or commerce, whether by land or by air. Doing so will help maintain high vaccination coverage across the United States, which is essential to sustaining the advances we have made thus far and have allowed some early actions to be revised. CDC does not recommend further exceptions for specific worker categories at this time.'' [22]

[19] *See id.*

[20] *See* Memorandum from CDC to CBP (Dec. 14, 2021).

[21] Canadian statistics may be found at: *https://health-infobase.canada.ca/covid-19/vaccination-coverage/* (accessed Apr. 17, 2022).

[22] *See* Memorandum from CDC to CBP, Update: Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders under Title 19 (Apr. 14, 2022).

Analysis of Temporary Travel Restrictions Under 19 U.S.C. 1318

DHS has consulted with interagency partners, taking into account relevant factors, including the above-mentioned CDC public health assessment, economic considerations, and operational impacts,[23] and concludes that a broad COVID–19 vaccination requirement at land POEs remains necessary and appropriate. In reaching this conclusion, DHS also reviewed a range of concerns, including those related to potential impacts on employers seeking H–2A temporary agricultural workers and entities that employ or rely on long-haul truck drivers engaged in cross-border transportation of goods. After careful review, DHS has determined not to provide industry-specific exceptions for the following two key reasons: (1) Workers engaged in trucking and agriculture continue to present a public health risk if not vaccinated; and (2) the vaccination requirement that has been in place since January 22, 2022 has not materially disrupted cross-border economic activity, according to data analysis that included input from DHS and other federal agencies.

First, even if particular workers do not engage in extended interaction with others, they still engage in activities that involve contact with others, thereby increasing the risk of being infected and spreading COVID–19. It is for this reason, and because vaccines are widely available, that as a public health matter, CDC once again did not recommend further exceptions for specific worker categories at this time.[24] Such workers also may enter the United States after contracting COVID–19 elsewhere, become seriously ill after arrival, and require hospitalization and use of limited healthcare resources as a result. A COVID–19 vaccination requirement at land POEs helps protect the health and safety of personnel at the border, other travelers, and the U.S. communities where these persons may be traveling and spending time among members of the public. Such a requirement also reduces potential burdens on local healthcare resources in U.S. communities.

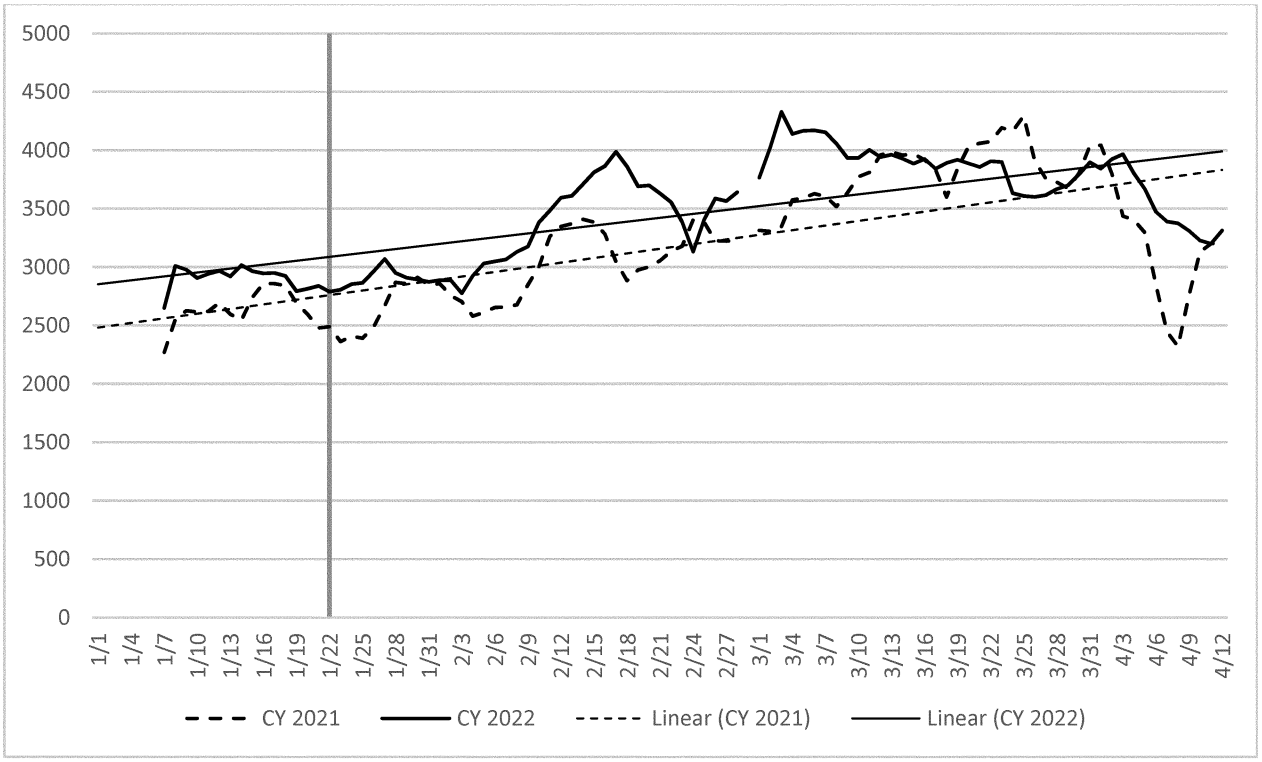
Second, DHS data, as well as that provided by other federal agencies, does not indicate a material disruption to cross-border economic activity and movement resulting from the vaccination requirement imposed in January 2022, including among temporary agriculture workers and commercial truck drivers. In fact, there has been an increase, not decrease, in the number of H–2A nonimmigrant workers admitted to the United States as compared to last year. While it is possible that there are individual-level effects on a subset of workers who are not fully vaccinated or their current or prospective employers, such impacts appear marginal based on the aggregate data.

As shown in *Figure 1* (where the vertical line represents the date the vaccination requirement for noncitizen non-LPRs went into full effect), H–2A admissions this fiscal year generally track seasonal patterns, which have reflected a longer-term increase in H–2A admissions since 2019, as shown in *Figure 2.* In fact, as stated above, H–2A admissions were generally higher between January 22, 2022 and March 31, 2022 when the COVID–19 vaccination requirement has been in place, as compared to H–2A admission numbers for the same time in 2021.

[23] Consistent with its assessment in January, CBP continues to assess that a testing option is not operationally feasible given the significant number of land border crossers that go back and forth on a daily or near-daily basis, for work or school. A negative COVID–19 test requirement would mean that such individuals would have to get tested just about every day. This is not currently feasible, given the cost and supply constraints, particularly in smaller rural locations. Further, CBP reports additional operational challenges associated with verifying test results, given the wide variation in documentation.

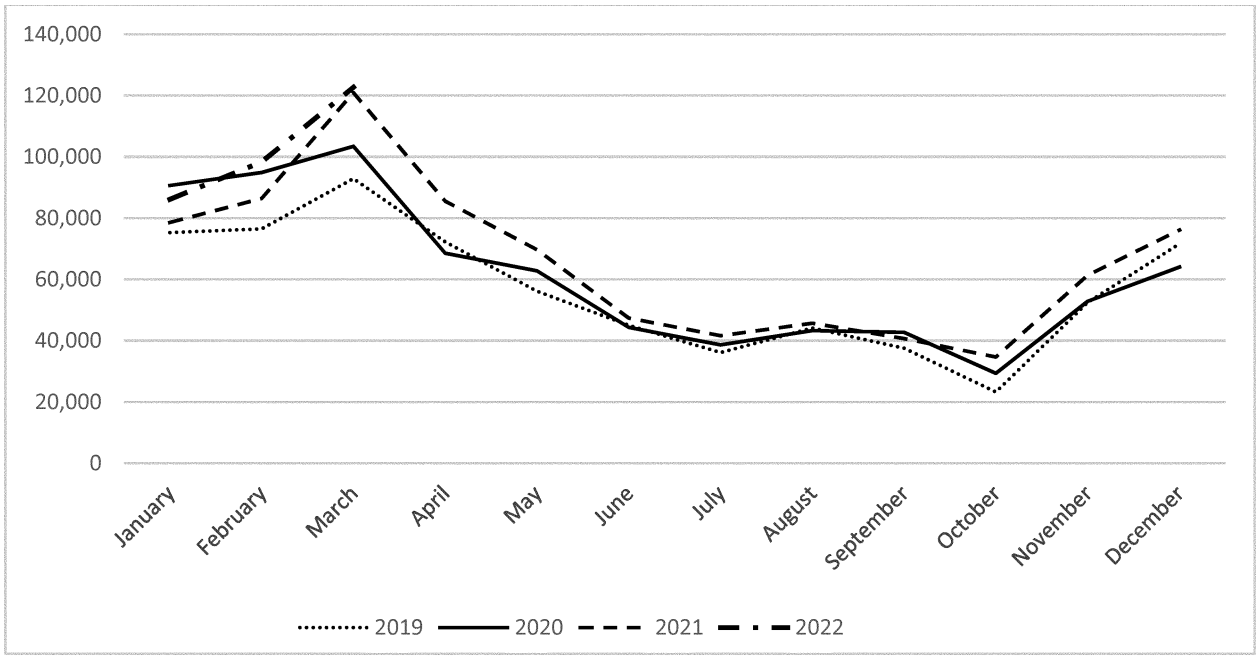
[24] *See* Memorandum from CDC to CBP (Mar. 21, 2022).

Figure 1. Rolling Average of H-2A Admissions (7 days)



Data Source: BorderStat. April 13, 2022.

Figure 2. Total Monthly H-2A Admissions

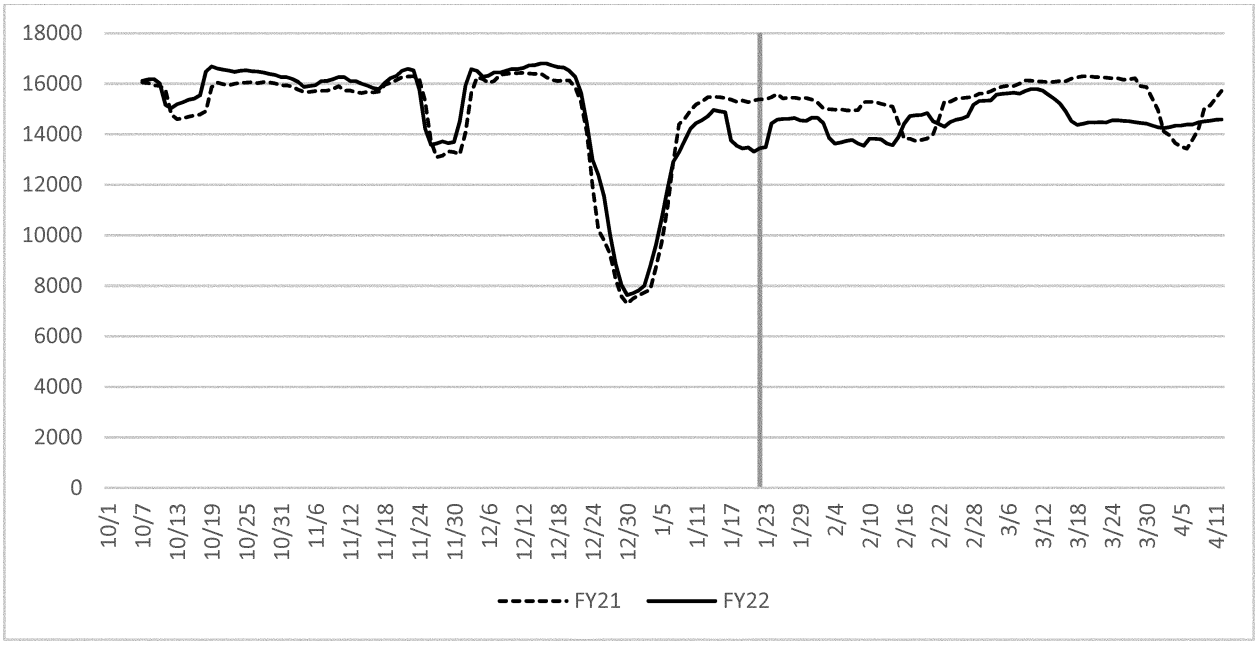


Data Source: BorderStat. April 13, 2022.

Likewise, there was no significant decrease in border crossings by commercial truck following the vaccination requirement that went into effect on January 22, 2022. *Figures 3* and *4* cover the months before the new

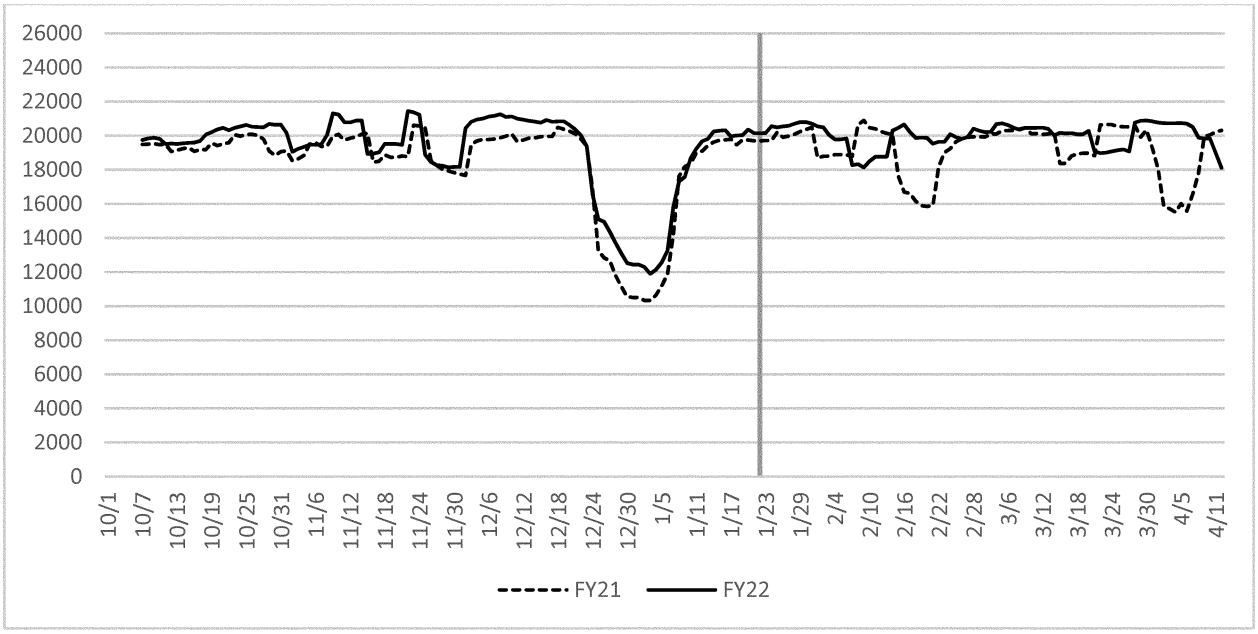
vaccination requirement was implemented as well as the months when the new vaccination requirement was implemented. This data shows regular fluctuations generally consistent with what is seen in data for the same time in Fiscal Year 2021 and in the months in 2022 before the new vaccination requirement went into effect. And while the aggregate number of commercial trucks entering the United States from Canada in 2022 is lower than 2021, this initial decrease predates the implementation of the new vaccination requirement on January 22, 2022, and is not mirrored on the Southern border, where commercial truck traffic appears to have slightly increased in 2022.

Figure 3. Rolling Average of Northern Border Truck Crossings (7 days) by Fiscal Year



Data Source: BorderStat. April 13, 2022.

Figure 4. Rolling Average of Southern Border Truck Crossings (7 days) by Fiscal Year



Data Source: BorderStat. April 13, 2022.

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DHS, in consultation with interagency partners, also has considered the operational effect of these requirements. In the January 2022 Notification, DHS projected minimal short-term operational impact. The relevant data that DHS and other federal agency partners have analyzed indicate that these projections were accurate. DHS has closely monitored wait times at land POEs, examined cross-border movement, and analyzed available data on border crossings since the vaccination requirement went into effect at land POEs on January 22, 2022, and has observed very minimal operational disruptions. As travelers become more familiar with the vaccination requirement and vaccination rates continue to increase globally, DHS projects any operational impacts to further diminish.

Based on the foregoing analysis and CDC recommendations, with this Notification, DHS will continue to align COVID–19 travel restrictions applicable to land POEs with those that apply to incoming international air travel,[25] ensuring more consistent application of COVID–19 vaccination requirements across travel domains. As a result, with limited exception, all noncitizen non-LPRs will be required, upon request, to show proof of full vaccination against COVID–19 to enter the United States.

Notice of Action

Following consultation with CDC and other interagency partners, and after having considered and weighed the relevant factors, I have determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico poses an ongoing ''specific threat to human life or national interests.'' Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[26] I have determined, in consultation with CDC and other interagency partners, that it is necessary to respond to the ongoing threat at land POEs along the United States-Mexico border by allowing the processing of travelers to the United States for only those noncitizen non-LPRs who are ''fully vaccinated against COVID–19'' and can provide ''proof of being fully vaccinated against COVID–19'' upon request, as those terms are defined under Presidential Proclamation 10294 and CDC's implementing Order (''CDC Order'').[27] This action does not apply to U.S. citizens, U.S. nationals, lawful permanent residents of the United States, or American Indians who have a right by statute to pass the borders of, or enter into, the United States. In addition, I hereby authorize exceptions to these restrictions for the following categories of noncitizen non-LPRs: [28]

- Certain categories of persons on diplomatic or official foreign government travel as specified in the CDC Order;
- persons under 18 years of age;
- certain participants in certain COVID–19 vaccine trials as specified in the CDC Order;
- persons with medical contraindications to receiving a COVID–19 vaccine as specified in the CDC Order;
- persons issued a humanitarian or emergency exception by the Secretary of Homeland Security;
- persons with valid nonimmigrant visas (excluding B–1 [business] or B–2 [tourism] visas) who are citizens of a country with limited COVID–19 vaccine availability, as specified in the CDC Order;
- members of the U.S. Armed Forces or their spouses or children (under 18 years of age) as specified in the CDC Order; and,
- persons whose entry would be in the U.S. national interest, as determined by the Secretary of Homeland Security.

In administering such exceptions, DHS will not require the Covered Individual Attestation currently in use by CDC for noncitizen non-LPRs seeking to enter the United States by air travel, or similar form, but DHS may, in its discretion, require any person invoking an exception to this requirement to provide proof of eligibility consistent with documentation requirements outlined in CDC's Technical Instructions.[29]

This Notification does not apply to air or sea travel (except ferries and pleasure craft) between the United States and Mexico. This Notification does apply to passenger/freight rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions address temporary conditions and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes in Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.[30] In conjunction with interagency partners, DHS will closely monitor the effect of the requirements discussed herein, and the Secretary will, as needed and warranted, exercise relevant authority in support of the U.S. national interest.

I intend for this Notification and the restrictions discussed herein to be given effect to the fullest extent allowed by law. In the event that a court of competent jurisdiction stays, enjoins, or sets aside any aspect of this action, on its face or with respect to any person, entity, or class thereof, any portion of this action not determined by the court to be invalid or unenforceable should otherwise remain in effect for the duration stated above.

This action is not a rule subject to notice and comment under the Administrative Procedure Act. It is exempt from notice and comment requirements because it concerns ongoing discussions with Canada and

[25] *See* Presidential Proclamation 10294, *supra,* at n.5.

[26] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

[27] 86 FR 61224 (Nov. 05, 2021).

[28] The exceptions to this temporary restriction are generally aligned with those outlined in Presidential Proclamation 10294 and further described in the CDC Order, with modifications to account for the unique nature of land border operations where advance passenger information is largely not available.

[29] CDC, Technical Instructions for Implementing Presidential Proclamation Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic and CDC's Order, *https://www.cdc.gov/quarantine/order-safe-travel/technical-instructions.html* (last reviewed Mar. 3, 2022).

[30] Although past notifications of this type have sunset on dates certain, DHS has determined, in light of the analysis above, to instead engage in regular reviews of this policy, guided by public health data and other relevant inputs. In determining whether and when to lift the requirements imposed under this notification, DHS anticipates that it will take account of whether Presidential Proclamation 10294 remains in effect, among all relevant factors, consistent with the requirements of 19 U.S.C. 1318. DHS anticipates lifting the requirements imposed under this notification no later than when Presidential Proclamation 10294 is revoked.

Mexico on how best to control COVID–19 transmission over our shared borders and therefore directly ''involve[s] . . . a . . . foreign affairs function of the United States.'' Even if this action were subject to notice and comment, there is good cause to dispense with prior public notice and the opportunity to comment. Given the ongoing public health emergency caused by COVID–19, including the rapidly evolving circumstances associated with fluctuating rates of infection due to the Omicron variant and other potential future variants, it would be impracticable and contrary to the public health, and the public interest, to delay the issuance and effective date of this action.

The CBP Commissioner is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the implementation of the temporary measures set forth in this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian or emergency reasons or for other purposes in the national interest, permit the processing of travelers to the United States who would otherwise be subject to the restrictions announced in this Notification.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2022–08741 Filed 4–21–22; 8:45 am]

BILLING CODE 9112–FP–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

RIN 1601–ZA20

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of temporary travel restrictions.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (''Secretary''), after consulting with interagency partners, to continue to temporarily restrict travel by certain noncitizens into the United States at land ports of entry, including ferry terminals, (''land POEs'') along the United States-Canada border. These restrictions only apply to noncitizens who are neither U.S. nationals nor lawful permanent residents (''noncitizen non-LPRs''). Under the temporary restrictions, DHS will allow the processing for entry into the United States of only those noncitizen non-LPRs who are fully vaccinated against COVID–19 and can provide proof of being fully vaccinated against COVID–19 upon request at arrival. According to the Centers for Disease Control and Prevention (''CDC''), vaccines remain the most effective public health measure to protect people from severe illness or death from COVID–19, slow the transmission of COVID–19, and reduce the likelihood of new COVID–19 variants emerging. These restrictions help protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities. These restrictions provide for limited exceptions, largely consistent with the limited exceptions currently available with respect to COVID–19 vaccination in the international air travel context.

DATES: These restrictions will become effective at 12:00 a.m. Eastern Daylight Time (EDT) on April 22, 2022, and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes in Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.

FOR FURTHER INFORMATION CONTACT: Greta Campos, Office of Field Operations, U.S. Customs and Border Protection (CBP), 202–344–2775.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, the Department of Homeland Security (''DHS'') published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPRs into the United States at land POEs along the United States-Canada border to ''essential travel,'' as further defined in that document.[1] The March 24, 2020, Notification described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak, continued transmission, and spread of the virus associated with COVID–19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada posed a specific threat to human life or national interests. Under the March 24, 2020, Notification, DHS continued to allow certain categories of travel, described as ''essential travel.'' Essential travel included travel to attend educational institutions, travel to work in the United States, travel for emergency response and public health purposes, and travel for lawful cross-border trade. Essential travel also included travel by U.S. citizens and lawful permanent residents returning to the United States.

From March 2020 through October 2021, in consultation with interagency partners, DHS reevaluated and ultimately extended the restrictions on non-essential travel each month. On October 21, 2021, DHS extended the restrictions until 11:59 p.m. EST on January 21, 2022.[2] In that document, DHS acknowledged that notwithstanding the continuing threat to human life or national interests posed by COVID–19—as well as then-recent increases in case levels, hospitalizations, and deaths due to the Delta variant—COVID–19 vaccines are effective against Delta and other known COVID–19 variants. These vaccines protect people from becoming infected with and severely ill from COVID–19 and significantly reduce the likelihood of hospitalization and death. DHS also acknowledged the White House COVID–19 Response Coordinator's September 2021 announcement regarding the United States' plans to revise standards and procedures for incoming international air travel to enable the air travel of travelers fully vaccinated against COVID–19 beginning in early November 2021.[3] DHS further stated that the Secretary intended to do the same with respect to certain travelers seeking to enter the United States from Mexico and Canada at land POEs to align the treatment of different types of travel and allow those who are fully vaccinated against COVID–19 to travel

[1] 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPR persons into the United States at land POEs along the United States-Mexico border to ''essential travel,'' as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

[2] *See* 86 FR 58218 (Oct. 21, 2021) (extending restrictions for the United States-Canada border); 86 FR 58216 (Oct. 21, 2021) (extending restrictions for the United States-Mexico border).

[3] *See* Press Briefing by Press Secretary Jen Psaki (Sept. 20, 2021), *https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/20/press-briefing-by-press-secretary-jen-psaki-september-20-2021/* (''As was announced in a call earlier today . . . [w]e—starting in . . . early November [will] be putting in place strict protocols to prevent the spread of COVID–19 from passengers flying internationally into the United States by requiring that adult foreign nationals traveling to the United States be fully vaccinated.'').

to the United States, whether for essential or non-essential reasons.[4]

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and CDC,[5] DHS announced that beginning November 8, 2021, non-essential travel of noncitizen non-LPRs would be permitted through land POEs, provided that the traveler is fully vaccinated against COVID–19 and can provide proof of full COVID–19 vaccination status upon request.[6] DHS also announced in October 2021 that beginning in January 2022, inbound noncitizen non-LPRs traveling to the United States via land POEs—whether for essential or non-essential reasons—would be required to be fully vaccinated against COVID–19 and provide proof of full COVID–19 vaccination status. In making this announcement, the Department provided fair notice of the anticipated changes, thereby allowing ample time for noncitizen non-LPR essential travelers to get fully vaccinated against COVID–19.[7]

On December 14, 2021, at DHS's request, CDC provided a memorandum to DHS describing the current status of the COVID–19 public health emergency. The CDC memorandum warned of ''case counts and deaths due to COVID–19 continuing to increase around the globe and the emergence of new and concerning variants,'' and emphasized that ''[v]accination is the single most important measure for reducing risk for SARS–CoV–2 transmission and avoiding severe illness, hospitalization, and death.'' [8] Consistent with these considerations and in line with DHS's October 2021 announcement, CDC recommended that proof of COVID–19 vaccination requirements be expanded to cover both essential and non-essential noncitizen non-LPR travelers.

In support of this conclusion, CDC cited studies indicating that individuals vaccinated against COVID–19 are five times less likely to be infected with COVID–19 and more than eight times less likely to require hospitalization than those who are unvaccinated. Conversely, unvaccinated people are 14 times more likely to die from COVID–19 than those who are vaccinated.[9] Per CDC, ''proof of vaccination of travelers helps protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities. Border security and transportation security work is part of the Nation's critical infrastructure and presents unique challenges for ensuring the health and safety of personnel and travelers.'' [10] In a January 14, 2022, update, CDC confirmed its prior recommendation. Specifically, CDC noted the ''rapid increase'' of COVID–19 cases across the United States that have contributed to high levels of community transmission and increased rates of new hospitalizations and deaths. According to CDC, between January 5 and January 11, 2022, the seven-day average for new hospital admissions of patients with confirmed COVID–19 increased by 24 percent over the prior week, and the seven-day average for new COVID–19-related deaths rose to 2,991, an increase of 33.7 percent compared to the prior week. CDC emphasized that this increase had exacerbated the strain on the United States' healthcare system and again urged that ''[v]accination of the broadest number of people best protects all individuals and preserves the United States' critical infrastructure, including healthcare systems and essential workforce.'' CDC thus urged ''the most comprehensive requirements possible for proof of vaccination'' and specifically recommended against exceptions to travel restrictions for specific worker categories as a public health matter.[11]

Given these recommendations, and after consultation with interagency partners and consideration of all relevant factors, including economic considerations, DHS announced the decision of the Secretary to temporarily restrict travel by noncitizen non-LPRs into the United States at land POEs along the United States-Canada border by requiring proof of COVID–19 vaccination upon request at arrival.[12] This requirement was put in place at 12:00 a.m. EST on January 22, 2022, and will remain in effect until 11:59 p.m. EDT on April 21, 2022, unless amended or rescinded prior to that time.

CDC's Public Health Assessment and Recommendation To Continue COVID–19 Vaccination Requirement for Entry of Noncitizen Non-LPR Travelers

In considering whether to extend the travel restrictions, DHS solicited, and CDC provided to DHS, an updated public health assessment and recommendations regarding the DHS requirement for noncitizen non-LPRs to be fully vaccinated and to provide proof of COVID–19 vaccination for entry at land POEs. CDC sent a memorandum to the Commissioner of U.S. Customs and Border Protection on March 21, 2022, with its recommendations.[13] CDC reiterated that vaccination protects the public from severe illness, including deaths and hospitalizations.[14] Of note, a recent CDC study found that, for those people hospitalized with COVID–19, severe outcomes, as measured by length of hospital stay and number of intensive care unit stays, appeared lower at the time when the Omicron variant was initially surging than during previous periods of high transmission associated with previous variants—something that CDC attributed in part to wider vaccination coverage and up-to-date boosters.[15] This is consistent with CDC's

[4] *See* 86 FR 58218; 86 FR 58216.

[5] Changes to requirements for travel by air were implemented by, *inter alia,* Presidential Proclamation 10294 of October 25, 2021, 86 FR 59603 (Oct. 28, 2021) (''Presidential Proclamation 10294''), and a related CDC order, 86 FR 61224 (Nov. 5, 2021) (''CDC Order''). *See also* CDC, *Requirement for Proof of Negative COVID–19 Test or Recovery from COVID–19 for All Air Passengers Arriving in the United States, https://www.cdc.gov/quarantine/pdf/Global-Testing-Order-10-25-21-p.pdf* (Oct. 25, 2021); *Requirement for Airlines and Operators to Collect Contact Information for All Passengers Arriving into the United States, https://www.cdc.gov/quarantine/pdf/CDC-Global-Contact-Tracing-Order-10-25-2021-p.pdf* (Oct. 25, 2021). CDC later amended its testing order following developments related to the Omicron variant. *See CDC, Requirement for Proof of Negative COVID–19 Test Result or Recovery from COVID–19 for All Airline Passengers Arriving into the United States, https://www.cdc.gov/quarantine/pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf* (Dec. 2, 2021).

[6] *See* 86 FR 72842 (Dec. 23, 2021) (describing the announcement with respect to Canada); 86 FR 72843 (Dec. 23, 2021) (describing the announcement with respect to Mexico).

[7] *See* DHS, DHS Releases Details for Fully Vaccinated, Non-Citizen Travelers to Enter the U.S. at Land and Ferry Border Crossings, *https://www.dhs.gov/news/2021/10/29/dhs-releases-details-fully-vaccinated-non-citizen-travelers-enter-us-land-and-ferry* (Oct. 29, 2021); DHS, Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals, *https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals* (updated Jan. 20, 2022); *see also* DHS, Frequently Asked Questions: Guidance for Travelers to Enter the U.S., *https://www.dhs.gov/news/2021/10/29/frequently-asked-questions-guidance-travelers-enter-us* (updated Jan. 20, 2022).

[8] *See* Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders (Dec. 14, 2021).

[9] *Id.*

[10] *Id.*

[11] Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders—Addendum (Jan. 18, 2022).

[12] *See* 87 FR 3429 (Jan. 24, 2022); 87 FR 3425 (Jan. 24, 2022) (parallel Mexico notification).

[13] *See* Memorandum from CDC to CBP, Update: Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders under Title 19 (March 21, 2022).

[14] *See* Memorandum from CDC to CBP (March 21, 2022).

[15] *COVID Data Tracker Weekly Review: Interpretive Summary for February 11, 2022,* Centers for Disease Control and Prevention, *https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/02112022.html* (Feb. 11, 2022); *see* Memorandum from CDC to CBP (March 21, 2022).

assessment that vaccines remain the most effective public health measure to protect people from severe illness or death from COVID–19, slow transmission of COVID–19, and reduce the likelihood of new COVID–19 variants emerging.[16]

CDC also noted that the U.S. Government's actions and guidance in response to COVID–19 have evolved over the course of the pandemic as more scientific information has become available. During earlier phases of the pandemic, pharmaceutical interventions were unavailable, and the United States had to instead rely on largely nonpharmaceutical interventions, including limits on gatherings and school closures, masking, and testing. Expanded epidemiologic data, advances in scientific knowledge, and the availability of pharmaceutical interventions (both vaccines and effective treatments), however, have permitted many of those early actions to be dialed back in favor of a more nuanced and narrowly tailored set of tools that provide a less burdensome means of preventing and controlling COVID–19. In CDC's judgment, maintaining high vaccination coverage is essential to sustaining the use of less burdensome measures. To ensure sustained vaccine coverage, CDC recommends continuing both domestic efforts to increase vaccine uptake (primary series and booster doses) among U.S. residents and measures to ensure high rates of vaccination coverage among persons entering the United States.[17]

Echoing prior assessments, CDC's March 21, 2022, recommendation ''encourages continued implementation of comprehensive requirements for proof of vaccination for *all* [noncitizen non-LPRs] seeking entry into the United States,'' whether by land or by air.[18] CDC also once again recommended a ''comprehensive'' proof-of-vaccination requirement and recommended against ''further exceptions for specific worker categories at this time,'' as global vaccination rates continue to rise.[19]

Of particular importance to this analysis, COVID–19 vaccines—which according to CDC are ''the single most important measure'' for responding to COVID–19 [20]—are widely available and have been increasingly available for months. As of April 8, 2022, in Canada, 81.39 percent of the entire population was fully vaccinated against COVID–19, while 85.59 percent of individuals five years and older are fully vaccinated against COVID–19.[21] According to the U.S. Department of State, as of March 28, 2022, Mexico administered at least one vaccine dose to 85.5 million people (90 percent of the adult target population) and fully vaccinated 79.6 million (87.8 percent of the adult target population). Approximately 61.8 percent of Mexico's total population is fully vaccinated.

On April 14, 2022, DHS asked CDC whether CDC's March 21, 2022, recommendations had changed over the preceding three weeks. CDC responded that its recommendations had not changed. CDC had reviewed the available data and concluded that its recommendations remain the same. CDC wrote that it ''encourages continued implementation of comprehensive requirements for proof of vaccination for all [noncitizen non-LPRs] seeking entry into the United States for travel or commerce, whether by land or by air. Doing so will help maintain high vaccination coverage across the United States, which is essential to sustaining the advances we have made thus far and have allowed some early actions to be revised. CDC does not recommend further exceptions for specific worker categories at this time.'' [22]

Analysis of Temporary Travel Restrictions Under 19 U.S.C. 1318

DHS has consulted with interagency partners, taking into account relevant factors, including the above-mentioned CDC public health assessment, economic considerations, and operational impacts,[23] and concludes that a broad COVID–19 vaccination requirement at land POEs remains necessary and appropriate. In reaching this conclusion, DHS also reviewed a range of concerns, including those related to potential impacts on employers seeking H–2A temporary agricultural workers and entities that employ or rely on long-haul truck drivers engaged in cross-border transportation of goods. After careful review, DHS has determined not to provide industry-specific exceptions for the following two key reasons: (1) Workers engaged in trucking and agriculture continue to present a public health risk if not vaccinated; and (2) the vaccination requirement that has been in place since January 22, 2022, has not materially disrupted cross-border economic activity, according to data analysis that included input from DHS and other federal agencies.

First, even if particular workers do not engage in extended interaction with others, they still engage in activities that involve contact with others, thereby increasing the risk of being infected and spreading COVID–19. It is for this reason, and because vaccines are widely available, that as a public health matter, CDC once again did not recommend further exceptions for specific worker categories at this time.[24] Such workers also may enter the United States after contracting COVID–19 elsewhere, become seriously ill after arrival, and require hospitalization and use of limited healthcare resources as a result. A COVID–19 vaccination requirement at land POEs helps protect the health and safety of personnel at the border, other travelers, and the U.S. communities where these persons may be traveling and spending time among members of the public. Such a requirement also reduces potential burdens on local healthcare resources in U.S. communities.

Second, DHS data, as well as that provided by other federal agencies, does not indicate a material disruption to cross-border economic activity and movement resulting from the vaccination requirement imposed in January 2022, including among temporary agriculture workers and commercial truck drivers. In fact, there has been an increase, not decrease, in the number of H–2A nonimmigrant workers admitted to the United States as compared to last year. While it is possible that there are individual-level effects on a subset of workers who are not fully vaccinated or their current or prospective employers, such impacts appear marginal based on the aggregate data.

As shown in *Figure 1* (where the vertical line represents the date the

[16] COVID–19 Vaccines Work, December 23, 2021. *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html* (accessed March. 22, 2022).

[17] *See* Memorandum from CDC to CBP (March 21, 2022).

[18] *Id.*

[19] *See id.*

[20] *See* Memorandum from CDC to CBP (Dec. 14, 2021).

[21] Canadian statistics may be found at: *https://health-infobase.canada.ca/covid-19/vaccination-coverage/* (accessed Apr. 17, 2022).

[22] *See* Memorandum from CDC to CBP, Update: Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders under Title 19 (Apr. 14, 2022).

[23] Consistent with its assessment in January, CBP continues to assess that a testing option is not operationally feasible given the significant number of land border crossers that go back and forth on a daily or near-daily basis, for work or school. A negative COVID–19 test requirement would mean that such individuals would have to get tested just about every day. This is not currently feasible, given the cost and supply constraints, particularly in smaller rural locations. Further, CBP reports additional operational challenges associated with verifying test results, given the wide variation in documentation.

[24] *See* Memorandum from CDC to CBP (Mar. 21, 2022).

vaccination requirement for noncitizen non-LPRs went into full effect), H–2A admissions this fiscal year generally track seasonal patterns, which have reflected a longer-term increase in H–2A admissions since 2019, as shown in *Figure 2*. In fact, as stated above, H–2A admissions were generally higher between January 22, 2022 and March 31, 2022 when the COVID–19 vaccination requirement has been in place, as compared to H–2A admission numbers for the same time in 2021.

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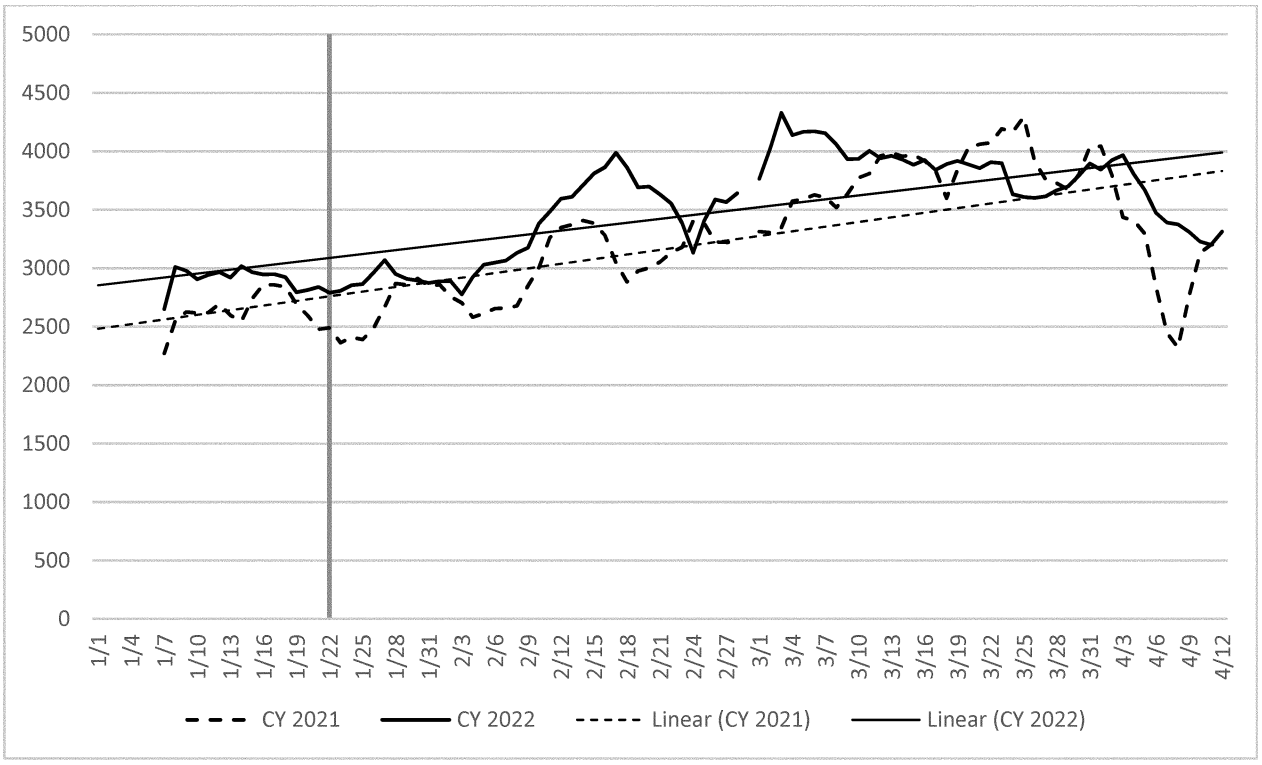
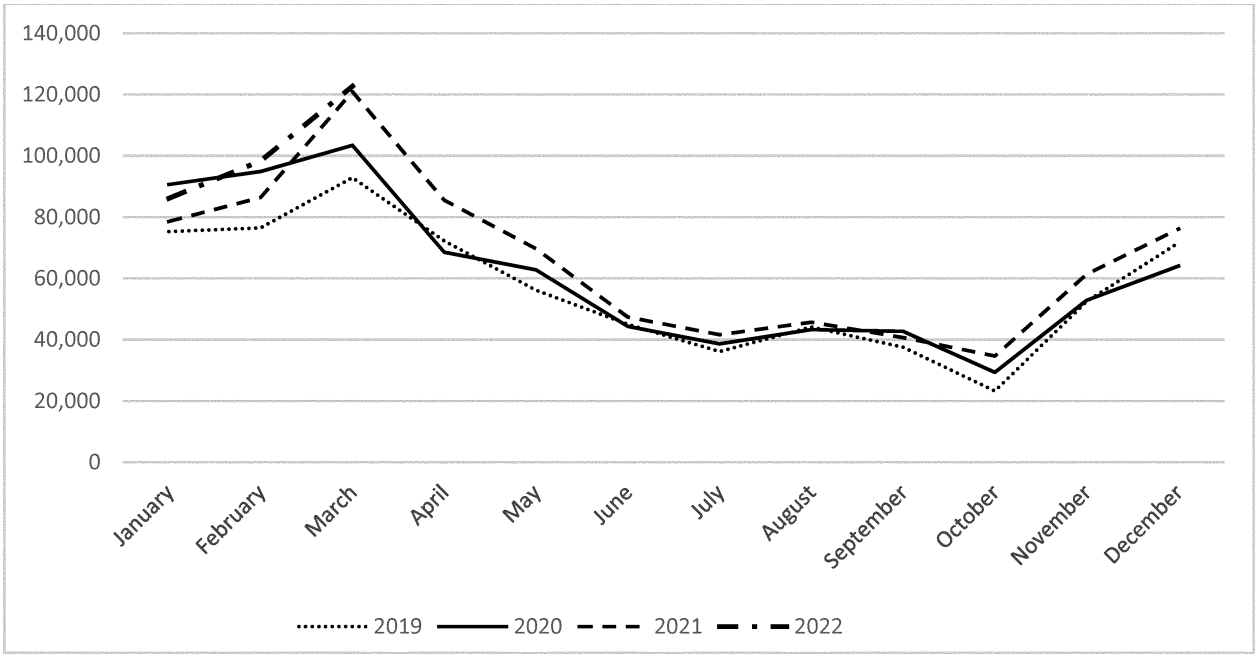
Figure 1. Rolling Average of H-2A Admissions (7 days)



Data Source: BorderStat. April 13, 2022.

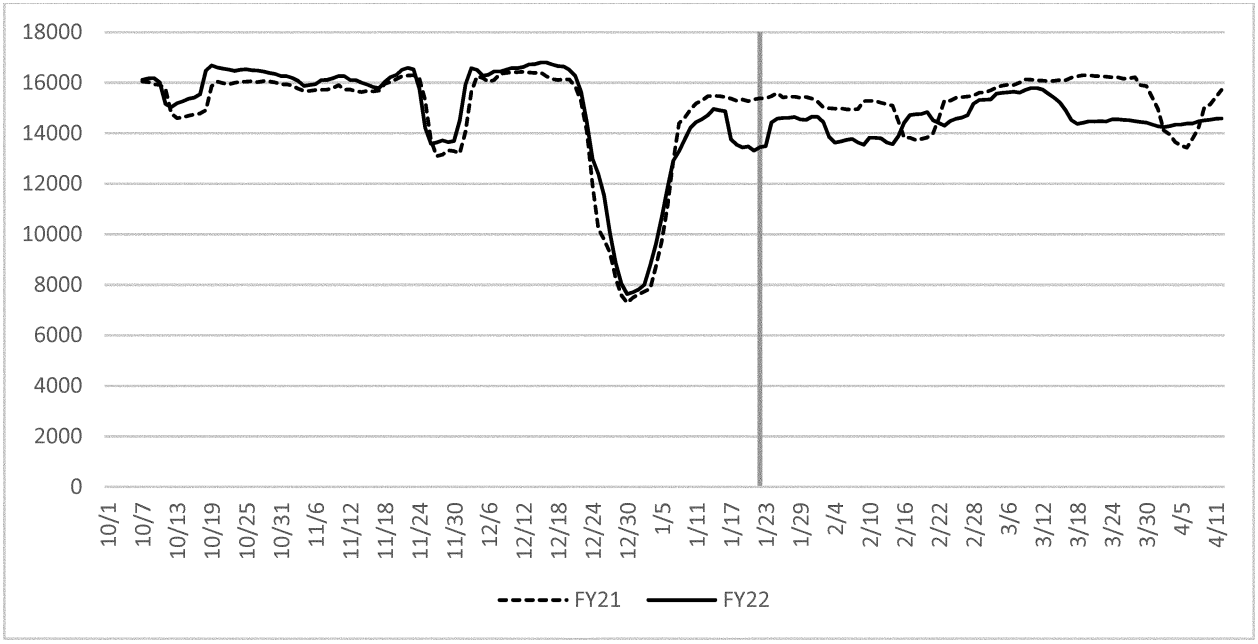
Figure 2. Total Monthly H-2A Admissions



Data Source: BorderStat. April 13, 2022.

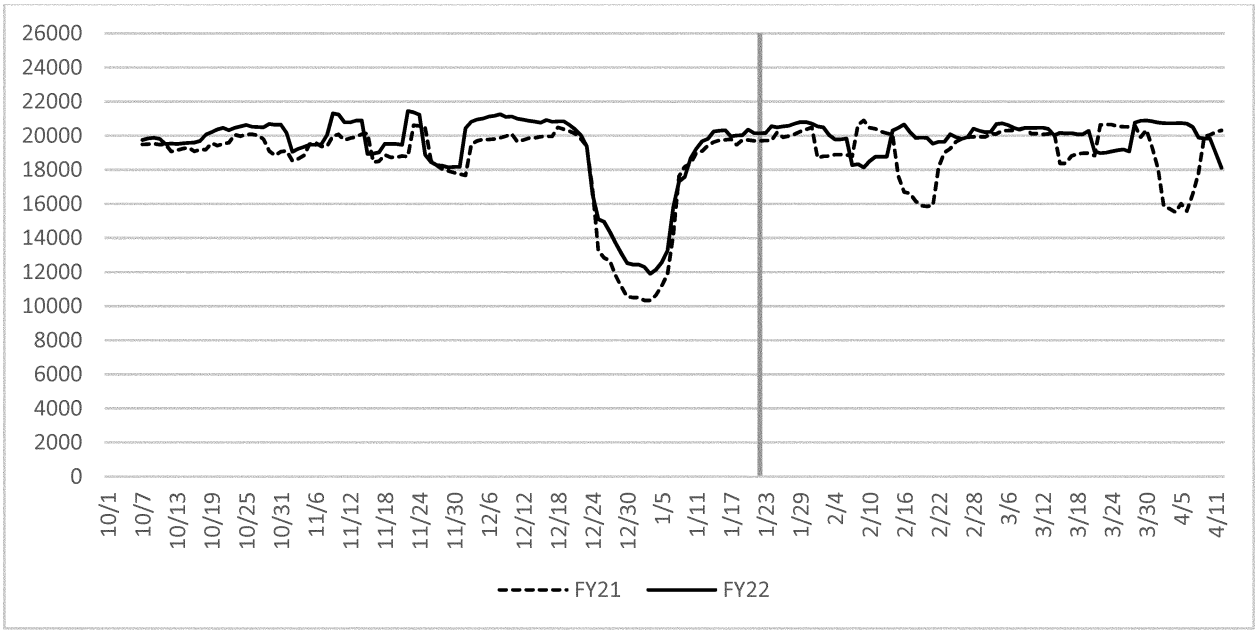
Likewise, there was no significant decrease in border crossings by commercial truck following the vaccination requirement that went into effect on January 22, 2022. *Figures 3* and *4* cover the months before the new vaccination requirement was implemented as well as the months when the new vaccination requirement was implemented. This data shows regular fluctuations generally consistent with what is seen in data for the same time in Fiscal Year 2021 and in the months in 2022 before the new vaccination requirement went into effect. And while the aggregate number of commercial trucks entering the United States from Canada in 2022 is lower than 2021, this initial decrease predates the implementation of the new vaccination requirement on January 22, 2022, and is not mirrored on the Southern border, where commercial truck traffic appears to have slightly increased in 2022.

Figure 3. Rolling Average of Northern Border Truck Crossings (7 days) by Fiscal Year



Data Source: BorderStat. April 13, 2022.

Figure 4. Rolling Average of Southern Border Truck Crossings (7 days) by Fiscal Year



Data Source: BorderStat. April 13, 2022.

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DHS, in consultation with interagency partners, also has considered the operational effect of these requirements. In the January 2022 Notification, DHS projected minimal short-term operational impact. The relevant data that DHS and other federal agency partners have analyzed indicate that these projections were accurate. DHS has closely monitored wait times at land POEs, examined cross-border movement, and analyzed available data on border crossings since the vaccination requirement went into effect at land POEs on January 22, 2022, and has observed very minimal operational disruptions. As travelers become more familiar with the vaccination requirement and vaccination rates continue to increase globally, DHS projects any operational impacts to further diminish.

Based on the foregoing analysis and CDC recommendations, with this Notification, DHS will continue to align COVID–19 travel restrictions applicable to land POEs with those that apply to incoming international air travel,[25] ensuring more consistent application of COVID–19 vaccination requirements across travel domains. As a result, with limited exception, all noncitizen non-LPRs will be required, upon request, to show proof of full vaccination against COVID–19 to enter the United States.

Notice of Action

Following consultation with CDC and other interagency partners, and after having considered and weighed the relevant factors, I have determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada poses an ongoing ''specific threat to human life or national interests.'' Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[26] I have determined, in consultation with CDC and other interagency partners, that it is necessary to respond to the ongoing threat at land POEs along the United States-Canada border by allowing the processing of travelers to the United States for only those noncitizen non-LPRs who are ''fully vaccinated against COVID–19'' and can provide ''proof of being fully vaccinated against COVID–19'' upon request, as those terms are defined under Presidential Proclamation 10294 and CDC's implementing Order (''CDC Order'').[27] This action does not apply to U.S. citizens, U.S. nationals, lawful permanent residents of the United States, or American Indians who have a right by statute to pass the borders of, or enter into, the United States. In addition, I hereby authorize exceptions to these restrictions for the following categories of noncitizen non-LPRs: [28]

- Certain categories of persons on diplomatic or official foreign government travel as specified in the CDC Order;
- persons under 18 years of age;
- certain participants in certain COVID–19 vaccine trials as specified in the CDC Order;
- persons with medical contraindications to receiving a COVID–19 vaccine as specified in the CDC Order;
- persons issued a humanitarian or emergency exception by the Secretary of Homeland Security;
- persons with valid nonimmigrant visas (excluding B–1 [business] or B–2 [tourism] visas) who are citizens of a country with limited COVID–19 vaccine availability, as specified in the CDC Order;
- members of the U.S. Armed Forces or their spouses or children (under 18 years of age) as specified in the CDC Order; and,
- persons whose entry would be in the U.S. national interest, as determined by the Secretary of Homeland Security.

In administering such exceptions, DHS will not require the Covered Individual Attestation currently in use by CDC for noncitizen non-LPRs seeking to enter the United States by air travel, or similar form, but DHS may, in its discretion, require any person invoking an exception to this requirement to provide proof of eligibility consistent with documentation requirements outlined in CDC's Technical Instructions.[29]

This Notification does not apply to air or sea travel (except ferries and pleasure craft) between the United States and Canada. This Notification does apply to passenger/freight rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These restrictions address temporary conditions and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes in Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.[30] In conjunction with interagency partners, DHS will closely monitor the effect of the requirements discussed herein, and the Secretary will, as needed and warranted, exercise relevant authority in support of the U.S. national interest.

I intend for this Notification and the restrictions discussed herein to be given effect to the fullest extent allowed by law. In the event that a court of competent jurisdiction stays, enjoins, or sets aside any aspect of this action, on its face or with respect to any person, entity, or class thereof, any portion of this action not determined by the court to be invalid or unenforceable should otherwise remain in effect for the duration stated above.

This action is not a rule subject to notice and comment under the Administrative Procedure Act. It is exempt from notice and comment requirements because it concerns ongoing discussions with Canada and Mexico on how best to control COVID–19 transmission over our shared borders and therefore directly ''involve[s] . . . a . . . foreign affairs function of the United States.'' Even if this action were subject to notice and comment, there is good cause to dispense with prior public notice and the opportunity to comment. Given the ongoing public health emergency caused by COVID–19, including the rapidly evolving circumstances associated with fluctuating rates of infection due to the Omicron variant and other potential future variants, it would be impracticable and contrary to the public health, and the public interest, to delay the issuance and effective date of this action.

The CBP Commissioner is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the implementation of the temporary

[25] *See* Presidential Proclamation 10294, *supra,* at n.5.

[26] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

[27] 86 FR 61224 (Nov. 5, 2021).

[28] The exceptions to this temporary restriction are generally aligned with those outlined in Presidential Proclamation 10294 and further described in the CDC Order, with modifications to account for the unique nature of land border operations where advance passenger information is largely not available.

[29] CDC, Technical Instructions for Implementing Presidential Proclamation Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic and CDC's Order, *https://www.cdc.gov/quarantine/order-safe-travel/technical-instructions.html* (last reviewed Mar. 3, 2022).

[30] Although past notifications of this type have sunset on dates certain, DHS has determined, in light of the analysis above, to instead engage in regular reviews of this policy, guided by public health data and other relevant inputs. In determining whether and when to lift the requirements imposed under this notification, DHS anticipates that it will take account of whether Presidential Proclamation 10294 remains in effect, among all relevant factors, consistent with the requirements of 19 U.S.C. 1318. DHS anticipates lifting the requirements imposed under this notification no later than when Presidential Proclamation 10294 is revoked.

measures set forth in this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian or emergency reasons or for other purposes in the national interest, permit the processing of travelers to the United States who would otherwise be subject to the restrictions announced in this Notification.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2022–08743 Filed 4–21–22; 8:45 am]

BILLING CODE 9112–FP–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0053]

Safety Zone; Southern California Annual Firework Events for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zones for the Big Bay Boom Fourth of July Fireworks on the waters of San Diego Bay, CA on Monday, July 4, 2022. The safety zones are necessary to provide for the safety of the participants, spectators, official vessels of the event, and general users of the waterway. Our regulation for the Southern California Annual Firework Events for the San Diego Captain of the Port Zone identifies the regulated areas for this event. During the enforcement period, spectators may not anchor, block, loiter in, or impede the transit of official patrol vessels in the regulated areas without the approval of the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 165.1123 will be enforced from 8 p.m. until 10 p.m. on July 4, 2022 for the locations described in Item No. 5 in Table 1 to § 165.1123.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard Sector, San Diego, CA; telephone 619–278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulations in 33 CFR 165.1123 for the Big Bay Boom Fourth of July Fireworks regulated area, for the locations described in Table 1 to § 165.1123, Item No. 5 of that section from 8 p.m. until 10 p.m. on July 4, 2022. This action is being taken to provide for the safety of life on navigable waterways during the fireworks event. Our regulation for Southern California Annual Firework Events for the San Diego Captain of the Port Zone, Item No. 5 in Table 1 to § 165.1123, identifies the regulated areas for the Big Bay Boom Fourth of July Fireworks event which encompasses multiple portions of San Diego Bay. Under the provisions of § 165.1123, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or Local law enforcement agencies in enforcing this regulation.

In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: April 18, 2022.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2022–08567 Filed 4–21–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

Final Waiver and Extension of the Project Periods for the Education Research and Special Education Research Grant Programs

AGENCY: Institute of Education Sciences (IES), Department of Education.

ACTION: Final waiver and extension of project periods.

SUMMARY: The Secretary waives the requirements in the Education Department General Administrative Regulations that generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The waiver and extension enable projects under Assistance Listing Numbers (ALN) 84.305A, 84.305B, 84.305C, 84.305R, 84.324A, 84.324B, and 84.324R to receive funding for an additional period, not to exceed 1 year.

DATES: The waiver and extension of the project periods are effective April 22, 2022.

FOR FURTHER INFORMATION CONTACT: Allen Ruby, U.S. Department of Education, 550 12th Street SW, Room 4146, Washington, DC 20202. Telephone: (202) 245–8145. Email: *Allen.Ruby@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Background

Under the Education Research Grants Program (ALN 84.305A), the Education Research and Development Center Program (ALN 84.305C), Research Grants focused on Systematic Replication (ALN 84.305R), the Special Education Research Grants Program (ALN 84.324A), and Research Grants Focused on Systematic Replication in Special Education (ALN 84.324R), IES supports research activities to improve the quality of U.S. education and thereby increase student academic achievement, advance teaching and learning for students with disabilities from birth through postsecondary education, reduce the achievement gap between high-performing and low-performing students, and increase access to and completion of postsecondary education. Under the Research Training Programs in the Education Sciences (ALN 84.305B) and the Research Training Programs in Special Education (ALN 84.324B), IES supports training programs to prepare individuals to conduct rigorous and relevant education research to advance knowledge in the field and address issues important to education policymakers and practitioners.

Ongoing IES-funded projects under the above seven IES grant programs have been forced to put their research or training on hold for up to two years and may be required to remain on hold for additional time, due to the disruptions caused by COVID–19. During this period, such projects have not received their annual continuation funding from their original grant awards. Once these projects restart their research or training activities, the prohibitions against project periods exceeding five years and

project period extensions involving the obligation of additional Federal funds, would result in the projects receiving multiple years of continuation funding within one year.

The waiver and extension enables these projects to receive their continuation funding over one additional period, not to exceed 1 year. By spreading out their continuation funding over an additional year, IES allows these grantees to properly budget their activities for the remaining years of the project, including an additional year 6.

Final Waivers and Extensions: The Department believes it is in the best interest of the public to extend project periods for one year and allow continuation funding to be provided during the additional year. Correspondingly, the Secretary waives the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years. Any activities carried out under these continuation awards must be consistent with the scope and objectives of the grantees' applications as approved in the relevant grant competition. The requirements for continuation awards are set forth in 34 CFR 75.253.

Exemption From Proposed Rulemaking

Under section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, IES is not subject to section 437(d) of the General Education Provisions Act, 20 U.S.C. 1232(d), and is therefore not required to offer interested parties the opportunity to comment on matters relating to grants.

Regulatory Flexibility Act Certification

Because notice-and-comment rulemaking is not necessary for this action, the Regulatory Flexibility Act (96 Pub. L. 354, 5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act of 1995

This final waiver and extension of the project period does not contain any information collection requirements.

Intergovernmental Review

These competitions are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: On request to the program contact person listed under **FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Mark Schneider,

Director, Institute of Education Sciences.

[FR Doc. 2022–08557 Filed 4–21–22; 8:45 am]

BILLING CODE 4000–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2021–6]

Copyright Claims Board: Initiating of Proceedings and Related Procedures; Correction

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule; correction.

SUMMARY: The U.S. Copyright Office is issuing a correction governing the fee to designate a service agent under the Copyright Alternative in Small-Claims Enforcement Act of 2020. The correction reverses an inadvertent reservation instruction.

DATES: Effective April 25, 2022.

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov,* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: In FR Doc. 2022–06264 at 87 FR 16989 in the issue of Friday, March 25, 2022, on page 17000 in the first and second columns, amendatory instruction 2 and the accompanying regulatory text is corrected to read as follows:

■ 2. In § 201.3:

■ a. Redesignate table 1 to paragraph (d) and table 1 to paragraph (e) as table 2 to paragraph (d) and table 3 to paragraph (e), respectively; and

■ b. Add paragraph (g)(1).

The addition reads as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Section and the Copyright Claims Board.

* * * * *

(g) * * *

TABLE 4 TO PARAGRAPH (g)

Copyright Claims Board fees	Fees ($)
(1) Initiate a proceeding before the Copyright Claims Board:	
(i) First payment	40
(ii) Second payment	60
* * * * *	

Dated: April 15, 2022.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2022–08655 Filed 4–21–22; 8:45 am]

BILLING CODE 1410–30–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 201 and 221

[Docket No. 2021–2]

Small Claims Expedited Registration Procedures: Clarification

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations to clarify the rules governing the expedited registration option under the Copyright Alternative in Small-Claims Enforcement Act of 2020. The amendment clarifies that when a Copyright Claims Board proceeding cannot continue because a registration is still pending, the Board may hold proceedings in abeyance at any point before a final determination is issued. The rule also describes the process for the Board to receive registration certificates when they are issued while a proceeding is pending, allows parties to request expedited registration before a proceeding becomes active, and corrects non-substantive typographical errors.

DATES: Effective April 22, 2022.

FOR FURTHER INFORMATION CONTACT: Megan Efthimiadis, Assistant to the General Counsel, by email at *meft@copyright.gov,* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION:

I. Background

The Copyright Alternative in Small-Claims Enforcement (''CASE'') Act of 2020 [1] directs the Copyright Office to establish the Copyright Claims Board (''CCB'' or ''Board''), a voluntary tribunal within the Office comprised of three Copyright Claims Officers who have the authority to render determinations on certain copyright claims for economic recoveries within the statutory limit. The Office issued a notification of inquiry (''NOI'') and subsequent notices of proposed rulemaking (''NPRM'') to describe the CASE Act's legislative background and regulatory scope and to ask for public input on various topics.[2] One NPRM addressed ''regulations allowing the Copyright Office to make a decision, on an expedited basis, to issue or deny copyright registration for an unregistered work that is at issue before the Board.'' [3]

In August 2021, the Librarian of Congress, after consulting with the Register of Copyrights, issued a final rule promulgating regulations to govern the expedited registration process.[4] The final rule contained the following language: ''[i]f the proceeding cannot continue because of a pending registration, the Copyright Claims Board shall hold proceedings in abeyance until the claimant or counterclaimant provides the Copyright Claims Board with the certificate of registration or the registration number on the certificate of registration or certificate preview.'' [5] The final rule also only allowed a party to initiate the expedited registration process once ''the proceeding has become active.'' [6]

II. Final Rule

The Board asked the Office to clarify two points regarding the regulations. First, the Board asked to clarify that neither the regulations nor the CASE Act require that a CCB proceeding must be held in abeyance immediately at the point the Board discovers that the claim concerns a work with a pending registration. The Office had promulgated a rule reflecting that the CASE Act allows for a proceeding to be held in abeyance where ''the proceeding may not proceed further because a registration certificate for the work is pending.'' [7] The CASE Act also states that ''if the proceeding is held in abeyance for more than 1 year, the Copyright Claims Board may, upon providing written notice to the parties to the proceeding, and 30 days to the parties to respond to the notice, dismiss the proceeding without prejudice'' and that the Board cannot issue a final determination for a claim involving a work that has been denied registration.[8] The CASE Act does not offer additional guidance on when a proceeding may not proceed further due to a pending registration certificate.

Where a registration application is pending for a work at issue before the Board, the Board has the authority to hold the proceeding in abeyance at any point where it believes the pendency means that the proceeding should not proceed further. If a work's eligibility for copyright registration is not at issue, the Board may not have any reason to delay the proceeding while the Copyright Office considers the application. In other circumstances, the Board may decide to halt the proceedings until after the Copyright Office makes a registration decision. The amended regulations reflect that it is within the Board's discretion, up to the issuance of its final determination, to determine whether and when a proceeding may not proceed further due to a pending registration.

Second, the Board asked the Office to clarify the procedures related to submitting a registration certificate and lifting the abeyance. The regulations state that proceedings will be held in abeyance due to a pending registration ''until the claimant or counterclaimant provides the Copyright Claims Board with the certificate of registration or the registration number on the certificate of registration or certificate preview.'' [9] While this process complies with the requirement that ''the proceeding shall be held in abeyance pending submission of the certificate to the Copyright Claims Board,'' [10] the rule did not explain that where party submits a registration number, and not the registration certificate, the Office will provide a copy of the certificate to the Board to include in the proceeding's record. While the Office hopes to automate this process in the future, parties should contact the Board when submitting the registration number, so the Board can notify the Office to complete the certificate submission process. In all circumstances, the parties to the proceeding will be given ''an opportunity to address the registration certificate'' before the Board renders a determination.[11]

The Board also suggested that the Office allow a claimant or counterclaimant to request expedited registration before a proceeding becomes active, with the Board's permission. While the Office's NPRM stated that a rule that only allowed a claimant or counterclaimant to request expedited registration after a proceeding becomes active would ''ensure that registration applicants do not invoke the CCB to receive special handling treatment at a discounted rate when not genuinely intending to pursue their claim through the CCB,'' [12] at this point the Office agrees that the Board should have the authority to allow a claimant or counterclaimant with a pending application to request expedited registration prior to a proceeding becoming active. In particular, the amendment will allow claimants or counterclaimants to receive an earlier registration decision where copyrightability is unclear. The Office is implementing the Board's suggestion in the final rule, but will revisit this rule if the aforementioned concerns materialize.

Finally, while the final rule clearly stated that an expedited registration request applied to a ''registration application,'' the language describing the fee stated that it applied to ''each request'' without noting that this specifically referred to an application request.[13] This final rule clarifies that language and also removes minor typographical errors.

These amendments constitute a change to a ''rule[ ] of agency . . . procedure[ ] or practice'' [14] and do not ''alter the rights or interests of parties.'' [15] Therefore, these amendments are not subject to the notice and comment requirements of the Administrative Procedure Act and are being issued as a final rule.

[1] Public Law 116–260, sec. 212, 134 Stat. 1182, 2176 (2020).

[2] 86 FR 16156, 16161 (Mar. 26, 2021).

[3] 86 FR 21990, 21991 (quoting 17 U.S.C. 1505(d)).

[4] 86 FR 46119 (Aug. 18, 2021).

[5] *Id.* at 46123 (codified at 37 CFR 221.1(b)).

[6] *Id.* (codified at 37 CFR 221.1(b)).

[7] 17 U.S.C. 1505(b)(2); 86 FR 46119, 46123 (codified at 37 CFR 221.1(b)).

[8] *Id.* at 1505(b)(2)–(3).

[9] 86 FR 46119, 46123 (codified at 37 CFR 221.1(b)).

[10] 17 U.S.C. 1505(b)(2).

[11] *Id.* at 1505(b)(1)(B).

[12] 86 FR 21990, 21992.

[13] 86 FR 46119, 46122–23 (codified at 37 CFR 221.2(c)(1)).

[14] 5 U.S.C. 553(b)(A).

[15] *JEM Broad. Co.* v. *F.C.C.,* 22 F.3d 320, 326 (D.C. Cir. 1994) (internal citation omitted).

List of Subjects

37 CFR Part 201

Copyright, General provisions.

37 CFR Part 221

Copyright, Claims.

Final Regulations

For the reasons stated in the preamble, the U.S. Copyright Office amends chapter II, subchapters A and B, of title 37 Code of Federal Regulations as follows:

SUBCHAPTER A—COPYRIGHT OFFICE AND PROCEDURES

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

Section 201.10 also issued under 17 U.S.C. 304.

■ 2. In § 201.3, revise paragraph (d)(8) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Section and the Copyright Claims Board.

* * * * *

(d) * * *

(8) Small claims expedited registration fee per registration application request	50

* * * * *

PART 221—REGISTRATION

■ 3. The authority citation for part 221 continues to read as follows:

Authority: 17 U.S.C. 702, 1510.

■ 4. In § 221.1, revise paragraph (b) to read as follows:

§ 221.1 Registration requirement.

* * * * *

(b) For a work that has not yet been registered, a claimant or counterclaimant who has a pending application to register the work must indicate on its claim or counterclaim notice that the work is pending registration and must include the work's service request (SR) number that was assigned to the copyright registration claim. If the Copyright Claims Board, in its discretion, at any time determines that the proceeding may not proceed forward because of a pending registration, the Copyright Claims Board shall issue an order holding the proceeding in abeyance until it is provided with the certificate of registration or the registration number on the certificate of registration or certificate preview. Under this provision, the Copyright Claims Board can decide to hold the proceeding in abeyance at any point in the proceeding, but must dismiss the proceeding without prejudice if it is notified that the registration application was refused. If the proceeding has been held in abeyance for more than one year, the Copyright Claims Board may dismiss the claim or counterclaim without prejudice after providing thirty days' written notice to all parties to the proceeding.

■ 5. In § 221.2, revise paragraphs (b) and (e) to read as follows:

§ 221.2 Small claims expedited registration.

* * * * *

(b) *Initiating small claims expedited registration.* The small claims expedited registration process can only be initiated after the claimant or counterclaimant has completed an application for copyright registration and either the Copyright Claims Board has issued an order holding the proceedings in abeyance pursuant to § 221.1(b) and has granted the applicant permission to request an expedited registration or the proceeding has become active. To initiate the small claims expedited registration process, the qualifying claimant or counterclaimant must make a request and pay the required fee set forth in § 201.3(d). Parties must not attempt to initiate small claims expedited registration by using the Copyright Office's electronic registration system (eCO).

* * * * *

(e) *Granted requests.* If the request for expedited registration under this section is granted, the Office will make every attempt to examine the application within 10 business days after notice of the request is delivered by the Copyright Claims Board to the Copyright Office's Office of Registration Policy and Practice, although the Copyright Office cannot guarantee that all applications will be examined within that timeframe.

* * * * *

Dated: April 15, 2022.

Shira Perlmutter,

Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2022–08654 Filed 4–21–22; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2021–0672; FRL–9558–02–R1]

Air Plan Approval; New Hampshire; Boston-Manchester-Portsmouth Area Second 10-Year Limited Maintenance Plan for 1997 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. On July 29, 2021, the State submitted its 1997 ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Boston-Manchester-Portsmouth (Portsmouth) area. EPA is approving the Portsmouth area LMP because it provides for the maintenance of the 1997 ozone NAAQS through the end of the second 10-year portion of the maintenance period. The effect of this action will be to make certain commitments related to maintenance of the 1997 ozone NAAQS in the Portsmouth maintenance area part of the New Hampshire SIP and therefore federally enforceable. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on May 23, 2022.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2021–0672. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1628, email *rackauskas.eric@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

Table of Contents

I. Background and Purpose

On March 1, 2022 (87 FR 11373), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Hampshire.

The NPRM proposed approval of the State's 1997 ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Boston-Manchester-Portsmouth (Portsmouth) area. The formal SIP revision was submitted by New Hampshire on July 29, 2021. The Portsmouth area 8-hour ozone nonattainment area in the southeastern-most portion of the state includes 52 cities and towns with a combined population of 729,071 in Hillsborough, Merrimack, Rockingham and Strafford counties. On June 15, 2004, the Portsmouth area was designated as nonattainment for the 1997 ozone NAAQS. On March 4, 2013, the area was redesignated to attainment with that standard.

The Portsmouth area's LMP for the 1997 ozone NAAQS submitted by the New Hampshire Department of Environmental Services (DES) is designed to maintain the 1997 ozone NAAQS within this area through the end of the second ten-year period of the maintenance period. We are approving the plan because it meets all applicable requirements under CAA sections 110 and 175A. Other specific requirements of the LMP and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

EPA is approving the New Hampshire 1997 ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan for the Boston-Manchester-Portsmouth area as a revision to the New Hampshire SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, 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, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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 Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 21, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 14, 2022.

David Cash,

Regional Administrator, EPA Region 1.

Part 52 of 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 EE—New Hampshire

■ 2. In § 52.1520(e) amend the table by adding entries for ''Boston-Manchester-Portsmouth Area Second 10-Year Limited Maintenance Plan for 1997 Ozone NAAQS'' and ''Letter from New Hampshire and attachment G Amendment'' at the end of the table to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(e) * * *

NEW HAMPSHIRE NON-REGULATORY

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date [1]	Explanations
* *	* *	*	* *	*
Boston-Manchester-Portsmouth Area Second 10-Year Limited Maintenance Plan for 1997 Ozone NAAQS.	Boston-Manchester-Portsmouth Maintenance Area.	7/29/2021	4/22/2022 [Insert **Federal Register** citation].	Approval for 2nd 10-year LMP for 1997 ozone NAAQS.
Letter from New Hampshire and attachment G Amendment.	Boston-Manchester-Portsmouth Maintenance Area.	12/23/2021	4/22/2022 [Insert **Federal Register** citation].	Supplemental information for 2nd 10-year LMP for 1997 ozone NAAQS.

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2022–08392 Filed 4–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0146; FRL–9681–01–R9]

Approval of Air Quality Implementation Plans; California; Ventura County; 8-Hour Ozone Nonattainment Area Requirements; Correction Due to Vacatur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA or ''Agency'') is correcting the state implementation plan (SIP) for the State of California to remove from the Code of Federal Regulations (CFR) revisions to the California SIP that were initially approved into the SIP in a June 25, 2020 final action that was subsequently vacated and remanded to the EPA by the Court of Appeals for the Ninth Circuit. This action is exempt from notice-and-comment rulemaking because it is ministerial in nature.

DATES: This final rule is effective on April 22, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0146. All documents in the docket are listed on the *https://www.regulations.gov website.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Tom Kelly, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3856, or by email at *kelly.thomasp@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

Table of Contents

I. Background and Rationale for This Action

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight.[1] These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to elevated levels of ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[2]

Under section 109 of the Clean Air Act (CAA), the EPA promulgates national ambient air quality standards (NAAQS) for pervasive air pollutants, such as ozone. The EPA has previously promulgated NAAQS for ozone in 1979 and 1997.[3] In 2008, the EPA revised and further strengthened the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 parts per million (ppm) averaged over an 8-hour period (and herein referred to as the ''2008 ozone NAAQS'').[4] Although the EPA further tightened the 8-hour ozone NAAQS to 0.070 ppm in 2015, this action relates to the requirements for the 2008 ozone NAAQS.[5]

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate

[1] The State of California refers to reactive organic gases (ROG) rather than VOC in some of its ozone-related SIP submissions. ROG and VOC refer essentially to the same set of chemical constituents, and for the sake of simplicity, we refer to this set of gases as VOC in this final rule.

[2] See ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone'' dated March 2008.

[3] The ozone NAAQS promulgated in 1979 was 0.12 parts per million (ppm) averaged over a 1-hour period (''1-hour ozone NAAQS''). *See* 44 FR 8202 (February 8, 1979). The ozone NAAQS promulgated in 1997 was 0.08 ppm averaged over an 8-hour period (''1997 ozone NAAQS''). See 62 FR 38856 (July 18, 1997).

[4] 73 FR 16436 (March 27, 2008).

[5] Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

areas throughout the country as attaining or not attaining the NAAQS. The EPA classifies ozone nonattainment areas under CAA section 181 according to the severity of the ozone pollution problem, with classifications ranging from ''Marginal'' to ''Extreme.'' State planning and emissions control requirements for ozone are determined, in part, by the nonattainment area's classification. The EPA designated Ventura County as nonattainment for the 2008 ozone NAAQS on May 21, 2012 and classified the area as ''Serious.'' [6] Ventura County lies within California's South Central Coast Air Basin, which includes the counties of Santa Barbara and San Luis Obispo, in addition to Ventura County. The Ventura County ozone nonattainment area for the 2008 ozone NAAQS includes the entire county except for the Channel Islands of Anacapa and San Nicolas Islands.

In California, the California Air Resources Board (CARB or ''State'') is the state agency responsible for the adoption and submission to the EPA of California SIP submissions, and it has broad authority to establish emissions standards and other requirements for mobile sources. Under California law, local and regional air pollution control districts in California are responsible for the regulation of stationary sources and are generally responsible for the development of regional air quality plans. In Ventura County, the Ventura County Air Pollution Control District (VCAPCD or ''District'') develops and adopts air quality management plans to address CAA planning requirements applicable to that region. The District then submits such plans to CARB for adoption and submission to the EPA as proposed revisions to the California SIP.

Under the CAA, after the EPA designates areas as nonattainment for a NAAQS, states with nonattainment areas are required to submit SIP revisions. With respect to areas designated as nonattainment, states must implement the 2008 ozone NAAQS under Title 1, part D of the CAA, which includes section 172 (''Nonattainment plan provisions in general'') and sections 181–185 of subpart 2 (''Additional Provisions for Ozone Nonattainment Areas''). To assist states in developing effective plans to address ozone nonattainment problems, in 2015, the EPA issued a SIP Requirements Rule (SRR) for the 2008 ozone NAAQS (''2008 Ozone SRR'') that addresses implementation of the 2008 ozone NAAQS, including attainment dates, requirements for emissions inventories, attainment and reasonable further progress (RFP) demonstrations, and the transition from the 1997 ozone NAAQS to the 2008 ozone NAAQS and associated anti-backsliding requirements.[7] The 2008 Ozone SRR is codified at 40 CFR part 51, subpart AA.

In 2017 and 2018, CARB submitted SIP revisions to address the nonattainment planning requirements for Ventura County for the 2008 ozone NAAQS, including the District's ''Final 2016 Ventura County Air Quality Management Plan'' (February 14, 2017) (''2016 Ventura County AQMP'') and CARB's ''2018 Updates to the California State Implementation Plan'' (''2018 SIP Update''). In two separate final rules, we approved the 2016 Ventura County AQMP and the 2018 SIP Update as meeting all the applicable statutory and regulatory requirements for the Ventura County Serious nonattainment area for the 2008 ozone NAAQS, with the exception of the contingency measure requirement.[8] For the contingency measure requirement, we issued a conditional approval that relied upon a commitment by the District to amend the District's architectural coatings rule to include contingency provisions and a commitment by CARB to submit the amended District rule to the EPA within a year of final conditional approval of the contingency measure element for Ventura County.[9]

Under the CAA, ozone nonattainment areas classified under subpart 2 as Serious or above must include contingency measures in their SIPs consistent with sections 172(c)(9) and 182(c)(9). Contingency measures are additional controls or measures to be implemented in the event the area fails to make RFP or to attain the NAAQS by the attainment date. Contingency measures must be designed to be implemented prospectively; already-implemented control measures may not serve as contingency measures even if they provide emissions reductions beyond those needed for any other CAA purpose. See *Bahr* v. *EPA,* 836 F.3d 1218, at 1235–1237 (9th Cir. 2016). The SIP should contain trigger mechanisms for the contingency measures, specify a schedule for implementation, and indicate that the measure will be implemented without significant further action by the state or the EPA.[10] Neither the CAA nor the EPA's implementing regulations establish a specific amount of emissions reductions that implementation of contingency measures must achieve, but the 2008 Ozone SRR reiterates the EPA's guidance recommendation that contingency measures should provide for emissions reductions approximately equivalent to one year's worth of RFP, thus amounting to reductions of 3 percent of the baseline emissions inventory for the nonattainment area.[11]

The contingency measure element for Ventura County for the 2008 ozone NAAQS consists of the contingency-related portion of the 2016 Ventura County AQMP and the 2018 SIP Update's updated evaluation of the surplus emissions reductions in Ventura County from already-implemented measures.[12] To supplement the contingency measure element for Ventura County, the District and CARB committed to adopt and submit a contingency measure within one year of the EPA's final conditional approval of the contingency measure element.[13] In December 2019, we proposed conditional approval of the contingency measure element of the 2016 Ventura County AQMP, as modified by the 2018 SIP Update,[14] and the Center for Biological Diversity (CBD) submitted comments challenging that proposed action.

CBD objected to our proposed conditional approval on several grounds. First, CBD noted that the Agency had not provided an estimate of the emissions reductions that would be achieved by the contingency measure and asserted that the Agency must therefore assume the reductions to be de minimis. CBD also challenged the proposed conditional approval on the grounds that the EPA's consideration of surplus emissions reductions from already-implemented measures in evaluating the adequacy of contingency measures is functionally no different than simply approving the already-implemented measures as contingency measures, which is inconsistent with the *Bahr* v. *EPA* decision. CBD also asserted that the EPA's approach would allow states to meet the contingency

[6] 77 FR 30088 (May 21, 2012).

[7] 80 FR 12264 (March 6, 2015).

[8] 85 FR 11814 (February 27, 2020); and 85 FR 38081 (June 25, 2020). The EPA's February 27, 2020 final approval of all other elements of the 2016 Ventura County AQMP was not challenged and this action does not relate to that final action.

[9] 85 FR 38081, 38085.

[10] 70 FR 71612 (November 29, 2005); see also 2008 Ozone SRR, 80 FR 12264, 12285.

[11] 80 FR 12264, 12285.

[12] 84 FR 70109, 70124 (December 20, 2019).

[13] The specific contingency measure that the District committed to adopt consists of revisions to the District's architectural coatings rule, such as lower VOC content limits for certain coating categories, consistent with CARB's 2019 update of its Suggested Control Measures for architectural coatings, to take effect if the EPA determines that Ventura County failed to achieve an RFP milestone or failed to attain the 2008 ozone NAAQS by the applicable attainment date.

[14] 84 FR 70109.

measure requirement through submission of token contingency measures so long as already-implemented measures provide for surplus emissions reductions equivalent to one year's worth of RFP. Contingency measures, according to CBD, should at a minimum equal one year's worth of RFP.

For our final action, in light of CBD's comment regarding the quantification of emissions reductions, based on preliminary estimates provided by the District and CARB, the EPA estimated that the contingency measure, *i.e.,* the contingency provision in the architectural coatings rule, would achieve emissions reductions equivalent to approximately two to five percent of one year's worth of RFP.[15] Notwithstanding expected emissions reductions from the contingency measure equivalent to only a fraction of one year's worth of RFP, we found that the one contingency measure (*i.e.,* once adopted, submitted, and approved by the EPA) would be sufficient for the State and District to meet the contingency measure requirement for Ventura County for the 2008 ozone NAAQS because of the substantial surplus emissions reductions we anticipate to occur in the future from already-implemented measures.

CBD filed a petition for review of the EPA's June 25, 2020 conditional approval of the contingency measure element for Ventura County for the 2008 ozone NAAQS.[16] In September 2020, the Court granted the EPA's unopposed motion to hold the case in abeyance until a decision was reached by the Ninth Circuit in the *Association of Irritated Residents* v. *EPA* case (No. 19–71223). The petitioners in the *Association of Irritated Residents* v. *EPA* case had filed a brief challenging the EPA's conditional approval of the contingency measure element for San Joaquin Valley for the 2008 ozone NAAQS on similar grounds as CBD had raised in comments on our proposed conditional approval of the contingency measure element for Ventura County.

On August 26, 2021, the U.S. Court of Appeals for the Ninth Circuit published its decision in the *Association of Irritated Residents* v. *EPA* case, granting the petition in part and denying the petition in part. The Court held that EPA's conditional approval of the contingency measure element was arbitrary and capricious because, in the court's view, the Agency had changed its position by accepting a contingency measure that would achieve far less than one year's worth of RFP as meeting the contingency measure requirement without a reasoned explanation.[17] The Court found that by taking into account the emissions reductions from already-implemented measures to find that the contingency measure would suffice to meet the applicable requirement, the EPA was circumventing the court's 2016 holding in *Bahr* v. *EPA.* The court rejected the EPA's arguments that the Agency's approach was grounded in its long-standing guidance and was consistent with the court's 2016 *Bahr* v. *EPA* decision. The court remanded the conditional approval action back to the Agency for further proceedings consistent with the decision.

In light of the decision in the *Association of Irritated Residents* v. *EPA* case and the overlap in the rationales presented by the EPA to justify the conditional approvals of the contingency measure elements for San Joaquin Valley and Ventura County and the grounds for challenging those actions, the EPA filed an unopposed motion for vacatur and voluntary remand in the *Center for Biological Diversity* v. *EPA* case.[18] The court granted the motion by order dated March 1, 2022.[19] We will be proposing a new action on the contingency measure element from the 2016 Ventura County AQMP, as modified by the 2018 SIP Update, in a separate rulemaking.

II. Final Action

The EPA is correcting the codification of the California SIP in the CFR to reflect the vacatur of the EPA's June 25, 2020 final action. The EPA is taking this action as a final rule without providing an opportunity for public comment because the EPA finds that the Administrative Procedure Act (APA) good cause exemption applies. In general, the APA requires that general notice of proposed rulemaking shall be published in the **Federal Register**. Such notice must provide an opportunity for public participation in the rulemaking process. However, the APA also provides a way for an agency to directly issue a final rulemaking in certain specific instances. This may occur, in particular, when an agency for good cause finds (and incorporates the finding and a brief statement of reasons in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B).

The EPA has determined that it is not necessary to provide an opportunity for public comment on this action because the correction of the CFR to reflect the vacatur of EPA's June 25, 2020 final action is a necessary ministerial act. The Court, through its Order referencing the Motion, vacated the rule conditionally approving the revisions to the California SIP that this action removes from display in the CFR and remanded this matter to the EPA. Therefore, removing the affected regulatory text simply implements the decision of the Court, and it would serve no useful purpose to provide an opportunity for public comment on this issue. In addition, notice-and-comment would be contrary to the public interest because it would unnecessarily delay the correction of the applicable California SIP as identified in the CFR. Such delay could result in confusion on the part of the regulated industry and state, local, and tribal air agencies on the actual SIP-approved provisions in the California SIP. For these reasons, the EPA finds good cause to issue a final rulemaking pursuant to section 553 of the APA, 5 U.S.C. 553(b)(3)(B). Moreover, the EPA finds that the problems outlined above regarding the effects of delaying issuance of the rule also provide good cause for not delaying its effective date. 5 U.S.C. 553(d)(3). Accordingly, the requirement for a delay in effective date does not apply and the rule will take effect upon publication in the **Federal Register**. 5 U.S.C. 553(d).

III. Statutory and Executive Order Reviews

A. General Requirements

This action merely makes ministerial corrections to the SIP consistent with state law that the EPA had previously approved 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions

[15] 85 FR 38081, 38083.

[16] *Center for Biological Diversity* v. *EPA,* Ninth Circuit Court of Appeals, Case No. 20–72513.

[17] *Association of Irritated Residents.* v. *EPA,* 10 F.4th 937 (9th Cir. 2021).

[18] *Center for Biological Diversity* v. *EPA,* Ninth Circuit Court of Appeals, Case No. 20–72513, Docket Entry: 15–1, December 6, 2021.

[19] *Center for Biological Diversity* v. *EPA,* Ninth Circuit Court of Appeals, Case No. 20–72513, Docket Entry: 16, March 1, 2022.

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 Clean Air Act; and

• Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this action 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).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, 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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 21, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action correcting the California SIP to reflect the vacatur of EPA's June 25, 2020 final rule may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 18, 2022.

Deborah Jordan,

Acting Regional Administrator, Region IX.

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

§ 52.220 [Amended]

■ 2. Section 52.220 is amended by removing and reserving paragraphs (c)(514)(ii)(A)(*6*) and (c)(532)(ii)(A)(*2*).

§ 52.248 [Amended]

■ 3. Section 52.248 is amended by removing and reserving paragraph (j).

[FR Doc. 2022–08570 Filed 4–21–22; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 300–3, 301–10, 301–51, and 302–16

[FTR Case 2020–301–1; Docket No. GSA–FTR–2021–0017, Sequence No. 2]

RIN 3090–AK45

Federal Travel Regulation; Rental Car Policy Updates and Clarifications

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule clarifies that agencies may reimburse relocating employees rental car fees when their privately owned vehicle (POV) suffers a shipping delay when arriving at or returning from a foreign or non-foreign area outside the continental United States (OCONUS). The rule also defines the terms: OCONUS and fuel. It also clarifies when collision damage waiver(s) and theft insurance are reimbursable during car rentals.

DATES: Effective May 23, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Davis, Program Analyst, Office of Government-wide Policy, at 202–669–1653 or *travelpolicy@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite ''FTR Case 2020–301–1.''

SUPPLEMENTARY INFORMATION:

I. Background

GSA published a proposed rule at 86 FR 50863 on September 13, 2021, to provide clarifications to rental car use policies and definitions.

Agencies are authorized to provide eligible employees a miscellaneous expenses allowance (MEA) to defray some of the costs incurred while relocating. A non-exhaustive list of examples of MEAs can be found at FTR § 302–16.2. While not specifically mentioned as an example of an MEA, agencies are allowed to provide reimbursement for relocating employees for rental car use while awaiting arrival of their privately owned vehicle (POV) due to shipment delay from or to OCONUS. The lack of specific mention of this type of miscellaneous expense in the FTR has caused agency confusion surrounding its authorization for reimbursement.

The reimbursement of the cost of collision damage waiver (CDW) or theft insurance when renting a vehicle for

official travel was not allowed (FTR § 301–10.451(b)). Employees required to travel OCONUS could be reimbursed for the cost of CDW or theft insurance, but not both.

This was done in error when transliterating the FTR into plain language. It is only relevant to a few rentals in foreign areas where both types of insurance are required by law.

The definition of types of vehicular power sources needed updating to replace ''gas'' and ''gasoline'' with the term ''fuel,'' and further defines fuel to account for other types of vehicular power sources, such as hydrogen, propane, and electricity.

II. Discussion and Analysis

GSA reviewed the public comments in discussion of the final rule. A discussion of the comments and changes made to the rule as a result of those comments are provided as follow:

A. Summary of Changes

This final rule makes the following changes from the proposed rule:

- Updates the list of MEA examples in FTR § 302–16.2 to explicitly include discretionary rental car reimbursement due to OCONUS shipping delays and adds the caveat that such expense may only be authorized for up to 10 days. The 10 days exclude reimbursement for the days after a POV is delivered or a new POV is purchased at the location. Adds a new paragraph (f) under FTR § 301–10.450 to clarify that a rental car is to be used for official purposes only and provides examples.
- Updates FTR § 301–10.451 (b) to reflect that collision damage waiver (CDW) and theft insurance may be reimbursed when deemed necessary.
- Clarifies the definition of OCONUS and adds it to the glossary of terms. OCONUS consists of foreign areas and non-foreign areas (unless otherwise qualified as ''non-foreign OCONUS'' or ''foreign OCONUS.'')
- Removes ''Trust Territories of the Pacific Islands'' from the definitions of ''Foreign area'' and ''Non-foreign area.'' The Trust Territories of the Pacific Islands no longer exist.
- Removes the terms ''gas'' and ''gasoline'', where appropriate, and replaces it with the term ''fuel'', and further defines fuel to account for other types of vehicle power sources, such as hydrogen, propane, and electricity.

B. Analysis of Public Comments

GSA received comments from six commenters through the public comment process.

1. One commenter suggested that GSA clarify that a POV must actually be shipped to claim rental expenses under the MEA and that shipment applies to both foreign area OCONUS and non-foreign area OCONUS. GSA modified the language in FTR part 302–16 to emphasize that a POV must be shipped and clarified that the allowance applies to both foreign area OCONUS and non-foreign area OCONUS.

2. One commenter stated that an employee should get reimbursed for a rental car as well as fuel. The FTR currently permits reimbursement for authorized use of a rental car under FTR 301–2.5(g). Fuel for rental vehicles is also an allowable transportation expense when incurred while on temporary duty travel.

3. One commenter expressed general support for the rule and another commenter expressed support specifically for replacing the words ''gasoline'' and ''gas'' with the term ''fuel'', where appropriate. GSA concurs.

4. One commenter had four suggestions: Amend the FTR to (1) allow employees to rent larger vehicles if needed for family size or larger amounts of cargo, (2) allow for use of a Government vehicle by authorized dependents, (3) include purchase of a POV as a reason to end rental car reimbursement, and (4) increase the size of the MEA or exclude rental car fees from the MEA expense limit. In response, GSA notes that: (1) The FTR currently allows agencies to authorize use of a larger class of rental vehicle when certain exceptions are met under FTR § 301–10.450, (2) the commenter's suggested change to the Government vehicle regulations is outside the scope of this rule and will not be implemented, (3) GSA concurs with the suggestion and has made conforming changes to the rule in FTR § 302–16.2, and (4) MEA limitations regarding basic pay are done under the authority of 5 U.S.C. 5738 and cannot be changed without further regulatory amendment. No changes to the rule will be made based on this suggestion.

5. One commenter wanted clarification that employees returning from an OCONUS location would also be allowed a rental car reimbursement when their OCONUS shipments are delayed. GSA concurs that this was the intent of the change and the language in FTR part 302–16 has been clarified accordingly. The commenter also asked a procedural question unrelated to the regulation change, and which is answered in existing regulations.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OIRA has determined that this is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

III. Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, 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. OIRA has determined that this final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel. Therefore, an Initial Regulatory Flexibility Analysis was not performed.

V. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 41 CFR Parts 300–3, 301–10, 301–51, and 302–16

Government employees, Travel and transportation expenses.

Robin Carnahan,

Administrator of General Services.

For the reasons set forth in the preamble, GSA is amending 41 CFR

parts 300–3, 301–10, 301–51, and 302–16 as set forth below:

PART 300–3—GLOSSARY OF TERMS

■ 1. The authority citation for part 300–3 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609, as amended; 3 CFR 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, revised May 22, 1992.

■ 2. Amend § 300–3.1 by:
■ a. Removing the definition of ''Foreign area'';
■ b. Adding, in alphabetical order, the definition of ''Fuel'';
■ c. Removing the definition of ''Non-foreign area''; and
■ d. Adding, in alphabetical order, the definition of ''Outside the Continental United States''.

The additions read as follows:

§ 300–3.1 What do the following terms mean?

* * * * *

Fuel—The energy source needed to power a vehicle. Examples include, but are not limited to, petroleum, hydrogen, propane, and electricity.

* * * * *

Outside the Continental United States (OCONUS)—Any area beyond the 48 contiguous States and the District of Columbia, *i.e.,* CONUS. OCONUS is further divided into foreign areas and non-foreign areas:

(1) Foreign area—Any area situated beyond both the CONUS and the non-foreign areas.

(2) Non-foreign area—The states of Alaska and Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and the territories and possessions of the United States.

* * * * *

PART 301–10—TRANSPORTATION EXPENSES

■ 3. The authority citation for part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707, 40 U.S.C. 121(c); 49 U.S.C. 40118; Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.'' Revised May 22, 1992.

§ 301–10.304 [AMENDED]

■ 4. Revise the table in § 301–10.304 to read as follows:

§ 301–10.304 What expenses are allowable in addition to the POV mileage rate allowances?

* * * * *

Reimbursable expenses in addition to mileage allowance	Non-reimbursable expenses included in the mileage allowance
Parking fees; ferry fees; bridge, road, and tunnel fees; and aircraft or airplane parking, landing, and tie-down fees.	Charges for repairs, depreciation, replacements, grease, oil, antifreeze, towage and similar speculative expenses, fuel, insurance, state and Federal taxes.

§ 301–10.401 [Amended]

■ 5. Amend § 301–10.401 by removing from paragraph (a) the word ''Gasoline'' and adding ''Fuel'' in its place.

■ 6. Amend § 301–10.450 by adding paragraph (f) to read as follows:

§ 301–10.450 What are the policies when authorized to rent a vehicle for official travel?

* * * * *

(f) A rental car is to be used only for official purposes, which include transportation:

(1) Between places of official business;

(2) Between such places and places of temporary lodging when public transportation is unavailable or its use is impractical; or

(3) Between either subparagraph (1) or (2) of this paragraph and restaurants, drug stores, barber shops, places of worship, cleaning establishments, and similar places necessary for the sustenance, comfort, or health of the employee to foster the continued efficient performance of Government business.

§ 301–10.451 [AMENDED]

■ 7. Amend § 301–10.451 by revising paragraph (b) to read as follows:

§ 301–10.451 May I be reimbursed for the cost of collision damage waiver (CDW) or theft insurance?

* * * * *

(b) *Exception.* You will be reimbursed for CDW or theft insurance, or both, when you travel OCONUS and such insurance is necessary because the rental or leasing agency requirements, foreign statute, or legal procedures could cause extreme difficulty for an employee involved in an accident.

PART 301–51—PAYING TRAVEL EXPENSES

■ 8. The authority citation for part 301–51 continues to read as follows:

Authority: 5 U.S.C. 5707. Subpart A is issued under the authority of Sec. 2, Pub. L. 105–264, 112 Stat 2350 (5 U.S.C. 5701 note); 40 U.S.C. 121(c).

§ 301–51.200 [Amended]

■ 9. In § 301–51.200 amend paragraph (a)(3) by removing the word ''Gasoline'' and adding ''Fuel'' in its place.

PART 302–16—Allowance for Miscellaneous Expenses

■ 10. The authority citation for part 302–16 continues to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, as amended, 3 CFR 1971–1975 Comp., p. 586.

■ 11. Amend § 302–16.2 by
■ a. Revising paragraph (a) and
■ b. In paragraph (b) adding a row to the end of the table.

The additions read as follows:

§ 302–16.2 What are miscellaneous expenses?

* * * * *

(a) Costs associated with relocating that are not covered by other relocation benefits detailed in chapter 302, but are covered by the MEA.

(b) * * *

General expenses	Fees/deposits	Losses
*	* * * * * *	*
Rental Car	Rental car fees while awaiting a delayed POV shipment to/from OCONUS. Reimbursement shall not exceed 10 days and does not include the days after the POV is delivered or a new POV is purchased at location.	

[FR Doc. 2022–08415 Filed 4–21–22; 8:45 am]
BILLING CODE 6820–14–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 210723–0150; RTID 0648–XB923]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Common Pool Fishery and Other Measures for Fishing Year 2022

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

ACTION: Temporary rule; possession and trip limit implementation.

SUMMARY: This action implements measures for the Northeast multispecies common pool fishery and other measures under Regional Administrator authority for the 2022 fishing year. This action is necessary to ensure that the Northeast multispecies common pool fishery may achieve the optimum yield for the relevant stocks, while controlling catch to help prevent in-season closures or quota overages. These measures include possession and trip limits, the allocation of zero trips into the Closed Area II Yellowtail Flounder/Haddock Special Access Program for common pool vessels to target yellowtail flounder, and the closure of the Regular B Days-at-Sea Program.

DATES: Effective at 0001 hours on May 1, 2022, through April 30, 2023.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, 978–281–9232.

SUPPLEMENTARY INFORMATION: The Northeast Multispecies Fishery Management Plan (FMP) regulations allow the Regional Administrator to implement possession limits for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs. This action implements a number of these management measures for the 2022 fishing year, effective May 1, 2022.

Common Pool Trip Limits

Regulations at § 648.86(o) allow the Regional Administrator to implement or adjust a per-Day-at-Sea (DAS) possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-annual catch limit (sub-ACL) in that fishing year. The possession and trip limits implemented for the start of the 2022 fishing year are included in Tables 1 and 2 below. These possession and trip limits were developed based on the common pool sub-ACLs set by Framework Adjustment 61 to the Northeast Multispecies FMP (86 FR 40353, July 27, 2021) that will be in effect on May 1, 2022. We considered preliminary 2022 sector rosters, expected common pool participation, and common pool fishing activity in previous fishing years. Additionally, during its December 2021 meeting, the New England Fishery Management Council adopted Framework Adjustment 63 to the Northeast Multispecies FMP, which, if approved, would modify the common pool sub-ACLs for several stocks. We are working to publish a proposed rule to request comment on Framework Adjustment 63. When developing the trip limits in this action, we took into account Council recommended sub-ACLs that may be implemented in Framework 63 to put in place trip limits on May 1, 2022, that would not result in the common pool exceeding any sub-ACLs or trimester total allowable catch (TAC). Based on this information, we project that these adjustments will facilitate optimized harvest of the common pool quotas, while preventing early trimester closures, and preventing catch from exceeding the 2022 fishing year sub-ACLs.

For Handgear A and Handgear B vessels, possession and trip limits for Georges Bank (GB) and Gulf of Maine (GOM) cod are tied to the possession and trip limits for groundfish DAS vessels. The default cod trip limit is 300 lb (136 kg) for Handgear A vessels and 75 lb (34 kg) for Handgear B vessels. If the GOM or GB cod limit for vessels fishing on a groundfish DAS drops below 300 lb (136 kg), then the respective Handgear A cod trip limit must be reduced to the same limit. Similarly, the Handgear B trip limit must be adjusted proportionally to the DAS limit (rounded up to the nearest 25 lb (11 kg)). In accordance with this process, the Handgear A and Handgear B possession and trip limits for GB and GOM cod are as listed below in Table 2.

Vessels with a Small Vessel category permit can possess up to 300 lb (136 kg) of cod, haddock, and yellowtail flounder, combined, per trip. Additionally, for these vessels, the trip limit for all stocks is equal to the landing limits per DAS applicable to multispecies DAS vessels. This is necessary to ensure that the trip limit applicable to the Small Vessel category permit is consistent with the trip limits for other common pool vessels, as described above.

Weekly quota monitoring reports for the common pool fishery can be found on our website at: *https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/nemultispecies.html.* We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports, and other available information and, if necessary, we will make additional adjustments to common pool management measures.

TABLE 1—2022 FISHING YEAR COMMON POOL POSSESSION AND TRIP LIMITS

Stock	2022 Trip limit
GB Cod (outside Eastern U.S./Canada Area)	100 lb (45.4 kg) per DAS, up to 200 lb (90.7 kg) per trip.
GB Cod (inside Eastern U.S./Canada Area)	
GB Cod [Closed Area II Yellowtail Flounder/Haddock SAP (for targeting haddock)].	500 lb (226.8 kg) per trip.
GOM Cod	200 lb (90.7 kg) per DAS, up to 400 lb (181.4 kg) per trip.
GB Haddock	100,000 lb (45,359.2 kg) per trip.
GOM Haddock	2,000 lb (907.2 kg) per DAS, up to 4,000 lb (1,814.4 kg) per trip.
GB Yellowtail Flounder	100 lb (45.4 kg) per trip.
Southern New England/Mid-Atlantic (SNE/MA) Yellowtail Flounder	100 lb (45.4 kg) per DAS, up to 200 lb (90.7 kg) per trip.
Cape Cod (CC)/GOM Yellowtail Flounder	1,000 lb (453.6 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
American plaice	2,000 lb (907.2 kg) per DAS, up to 4,000 lb (1,814.4 kg) per trip.
Witch Flounder	1,500 lb (680.4 kg) per trip.
GB Winter Flounder	250 lb (113.4 kg) per trip.
GOM Winter Flounder	1,000 lb (453.6 kg) per trip.

TABLE 1—2022 FISHING YEAR COMMON POOL POSSESSION AND TRIP LIMITS—Continued

Stock	2022 Trip limit
SNE/MA Winter Flounder	2,000 lb (907.2 kg) per DAS, up to 4,000 lb (1,814.4 kg) per trip.
Redfish	Unlimited.
White hake	1,500 lb (680.4 kg) per trip.
Pollock	Unlimited.
Atlantic Halibut	1 fish per trip.
Windowpane Flounder	Possession Prohibited.
Ocean Pout	
Atlantic Wolffish	

Note: Minimum fish sizes apply for many groundfish species, but are not included in this rule. Please see 50 CFR 648.83 for applicable minimum fish sizes.

TABLE 2—2022 FISHING YEAR COD TRIP LIMITS FOR HANDGEAR A, HANDGEAR B, AND SMALL VESSEL CATEGORY PERMITS

Permit	Initial 2022 trip limit
Handgear A GOM Cod	200 lb (90.7 kg) per trip.
Handgear A GB Cod	100 lb (45.4 kg kg) per trip.
Handgear B GOM Cod	25 lb (11 kg) per trip.
Handgear B GB Cod	25 lb (11 kg) per trip.
Small Vessel Category	300 lb (136.1 kg) of cod, haddock, and yellowtail flounder combined; additionally, vessels are limited to the common pool DAS limit for all stocks.

Table 3 includes the initial common pool trimester TACs for fishing year 2022. These trimester TACs are based on preliminary sector rosters. However, individual permit holders have until the end of the 2021 fishing year (April 30, 2022) to drop out of a sector and fish in the common pool fishery for the 2022 fishing year. Therefore, it is possible that the sector and common pool catch limits, including the trimester TACs, may change due to changes in sector rosters. If changes to sector rosters occur, updated catch limits and/or possession and trip limits will be announced as soon as possible in the 2022 fishing year to reflect the final sector rosters as of May 1, 2022. We are working to publish a proposed rule to request comment on updated 2022 specifications as recommended by the New England Fishery Management Council in Framework Adjustment 63. If approved, Framework Adjustment 63 would make additional changes to common pool sub-ACLs. There could be additional changes to common pool trimester TACs and possession and trip limits as a result.

TABLE 3—INITIAL COMMON POOL TRIMESTER TOTAL ALLOWABLE CATCHES FOR FISHING YEAR 2022

[mt, live weight]

Stock	Trimester total allowable catches		
	Trimester 1	Trimester 2	Trimester 3
GB Cod	7.6	9.2	10.3
GOM Cod	3.6	2.4	1.3
GB Haddock	348.2	425.6	515.9
GOM Haddock	36.2	34.9	63.0
GB Yellowtail Flounder	0.6	0.9	1.5
SNE/MA Yellowtail Flounder	0.7	0.9	1.6
CC/GOM Yellowtail Flounder	15.0	6.9	4.5
American Plaice	48.1	5.2	11.7
Witch Flounder	18.0	6.5	8.2
GB Winter Flounder	1.1	3.3	9.2
GOM Winter Flounder	7.6	7.8	5.1
Redfish	22.2	27.5	39.1
White Hake	7.3	6.0	6.0
Pollock	29.9	37.4	39.6

Closed Area II Yellowtail Flounder/Haddock Special Access Program

The regulations at § 648.85(b)(3)(vii) allow the Regional Administrator to determine the total number of common pool trips that may be declared into the Closed Area II Yellowtail Flounder/Haddock Special Access Program (SAP) to target yellowtail flounder. This action allocates zero trips for common pool vessels to target yellowtail flounder within the Closed Area II Yellowtail Flounder/Haddock SAP for fishing year 2022. As a result, this SAP is only open to target haddock, from August 1, 2022, through January 31, 2023. Northeast multispecies vessels fishing in the SAP must fish with a haddock separator trawl, a Ruhle trawl, or hook gear. Vessels may not fish in this SAP using flounder trawl nets.

The Regional Administrator may determine the allocation of the total number of trips into the Closed Area II

Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder catch limit and the amount of GB yellowtail flounder caught outside of the SAP. Allocating trips to target yellowtail flounder in the Closed Area II Yellowtail Flounder/Haddock SAP is discretionary if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit, for a total catch of 2,250,000 lb (1,020,600 kg). This calculation considers projected catch from all vessels from the area outside the SAP. Based on the fishing year 2022 GB yellowtail flounder groundfish sub-ACL implemented by Framework Adjustment 61 of 141,095.8 lb (64,000 kg), there is insufficient GB yellowtail flounder to allocate any trips to the SAP. Further, given the low GB yellowtail flounder catch limit, catch rates outside of this SAP are more than adequate to fully harvest the 2022 GB yellowtail flounder allocation.

If approved, Framework Adjustment 63 would implement a 2022 GB yellowtail flounder sub-ACL that is 73,634 lb (33,399.82 kg) greater than the Framework 61 sub-ACL, which amounts to fewer than 5 additional trips with a 15,000-lb (6,804-kg) trip limit in the SAP. As a result, we do not expect that the final rule implementing Framework 63 would allocate trips to the SAP to target yellowtail flounder.

Regular B DAS Program

The regulations at § 648.85(b)(6)(vi) authorize the Regional Administrator to close the Regular B DAS program by prohibiting the use of Regular B DAS when the continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP or the Regular B DAS Program. One reason for terminating the program is an inability to constrain common pool catches to the Incidental Catch TACs.

Framework Adjustment 61 implemented Common Pool Incidental Catch TACs for the Regular B DAS Program for the 2022 fishing year (Table 4). These TACs are further divided into Quarterly Incidental Catch TACs to be monitored and managed during each calendar quarter.

TABLE 4—FISHING YEAR TOTAL AND QUARTERLY INCIDENTAL CATCH TACS FOR THE REGULAR B DAS PROGRAM

[mt, live weight]

Stock	Total Incidental Catch TAC	Quarterly Incidental Catch TAC			
	2022	1st Quarter (13 percent)	2nd Quarter (29 percent)	3rd Quarter (29 percent)	4th Quarter (29 percent)
GB Cod	0.27	0.04	0.08	0.08	0.08
GOM Cod	0.07	0.01	0.02	0.02	0.02
GB Yellowtail Flounder	0.03	0.00	0.01	0.01	0.01
CC/GOM Yellowtail Flounder	0.26	0.03	0.08	0.08	0.08
American Plaice	3.25	0.42	0.94	0.94	0.94
Witch Flounder	1.63	0.21	0.47	0.47	0.47
SNE/MA Winter Flounder	0.34	0.04	0.10	0.10	0.10

Given that the Incidental Catch TACs allocated to the Regular B DAS Program for several stocks are very small, in-season management of the Regular B DAS Program is likely to be extremely difficult and impractical. Implementation of an in-season action to close the Regular B DAS Program once a Quarterly Incidental Catch TAC for a stock has been reached would not be possible to complete quickly enough to prevent further catch of that stock.

As a result, it is unlikely that we can effectively limit catch to the Incidental Catch TACs during fishing year 2022, and project that continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP and the Regular B DAS Program. The Regular B DAS Program will be closed and use of Regular B DAS is prohibited for the 2022 fishing year, through April 30, 2023. This applies to all vessels issued a limited access Northeast multispecies permit.

Classification

This action is authorized 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 contrary to the public interest and is unnecessary.

Regulations at § 648.86(o) authorize the Regional Administrator to adjust the Northeast multispecies possession and trip limits for common pool vessels in order to prevent the overharvest or underharvest of the pertinent common pool quotas. This action sets the initial common pool possession and trip limits on May 1, 2022, for the 2022 fishing year. The possession and trip limits implemented through this action help to ensure that the Northeast multispecies common pool fishery may achieve the optimum yield for the relevant stocks, while controlling catch to help prevent in-season closures or quota overages. Delay of this action would leave the common pool fishery with the possession and trip limits found in § 648.86, which are too high to control catch. This would likely lead to early closure of a trimester and quota overages. Any overage of the quota for either of the first two trimesters must be deducted from the Trimester 3 quota, which could substantially disrupt the trimester structure and intent to distribute the fishery across the entire fishing year. An overage reduction in Trimester 3 would further reduce fishing opportunities for common pool vessels and likely result in early closure of Trimester 3. Additionally, any overage of the annual quota would be deducted from common pool's quota for the next fishing year, to the detriment of this stock and diminishing fishing opportunities in the following fishing year.

The regulations at § 648.85(b)(3)(vii) require that the Regional Administrator announce the total number of allowed trips by common pool vessels that may be declared into the Closed Area II Yellowtail Flounder/Haddock SAP on or about June 1. We have included the announcement in this in-season action to meet this regulatory requirement. Doing so ensures that the fishing industry has sufficient notice in order to plan their activities in the new fishing year. This action occurs annually, and industry participants are accustomed to it and expect its timely implementation.

Given the low quota for GB yellowtail flounder in recent years, no trips have been allocated to this SAP from fishing year 2010 to fishing year 2021.

The regulations at § 648.85(b)(6)(vi) authorize the Regional Administrator to close the Regular B DAS program by prohibiting the use of Regular B DAS when the continuation of the program would undermine the achievement of the objectives of the Northeast Multispecies FMP or the Regular B DAS Program. The Regular B DAS program closure implemented through this action will prevent an overage of the Incidental Catch TACs. Delay of this action would provide vessel owners an opportunity to participate in the Regular B DAS Program, but participation and catch in the program may cause the allocation to be exceeded. In addition to the adverse consequences that are against the public interest, delaying implementation of this action for prior notice and opportunity for comment is unnecessary. These processes were established with prior notice and opportunity for comment. They were established to provide for regular and timely implementation of necessary catch limits to avoid adverse economic or ecological consequences that are not in the public interest. Further, adjusting catch limits in accordance with current conditions and limits provides maximum fishing opportunities practicable that avoid excess catch that may result in overfishing. Fishing industry participants and other stakeholders expect these actions to occur annually and inseason. They are regular occurrences that participants have become accustomed to. For the reasons above, delay of this action for additional prior notice and the opportunity for public comment and the 30-day delayed effectiveness period are unnecessary and against the public interest because they would undermine management objectives of the FMP and cause unnecessary negative economic impacts to the common pool fishery.

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

Dated: April 18, 2022.

Kelly Denit,

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

[FR Doc. 2022–08547 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 78
Friday, April 22, 2022

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Doc. No. AMS–SC–22–0004; SC22–915–1 PR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Avocado Administrative Committee to increase the assessment rate established for the 2022–23 and subsequent fiscal years. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by May 23, 2022.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be submitted to the Docket Clerk electronically by Email: *MarketingOrderComment@usda.gov* or internet: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Abigail.Campos@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in south Florida. Part 915, (referred to as ''the Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Avocado Administrative Committee (Committee) locally administers the Order and is comprised of growers and handlers operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with 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, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable Florida avocados for the 2022–23 fiscal year, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the United States Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the 2022–23 and subsequent fiscal years from $0.45 to $0.50 per 55-pound container or equivalent of avocados.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs for goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2021–22 and subsequent fiscal years, the Committee recommended, and AMS approved, an assessment rate that would continue in effect from fiscal

year to fiscal year unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on January 12, 2022, and recommended 2022–23 expenditures of $268,484 and an assessment rate of $0.50 per 55-pound container or equivalent of avocados. In comparison, last year's budgeted expenditures were $348,484. The assessment rate of $0.50 is $0.05 higher than the rate currently in effect. The Committee discussed the need to increase the assessment rate based on the 2022–23 crop estimate of 500,000 55-pound containers, a decrease from 800,000 from the previous year. At the current assessment rate, assessment income would equal only $225,000, an amount insufficient to cover the Committee's anticipated expenditures of $268,484. By increasing the assessment rate by $0.05, assessment income would be $250,000, which would reduce the amount of funds needed from the Committee's authorized reserve to cover the 2022–23 budgeted expenses. This amount, along with interest income, and funds from the reserve, should provide sufficient funds to meet 2022–23 anticipated expenses.

Major expenditures recommended by the Committee for the 2022–23 year include $116,164 for salaries, $53,350 for employee benefits, and $26,500 for office rent and supplies. Budgeted expenses for these items in 2021–22 were $116,164, $53,350, and $26,500 respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of Florida avocados, and the level of funds in reserve. Avocado shipments for the year are estimated at 500,000 55-pound containers, which should provide $250,000 in assessment income (500,000 containers × $0.50). Income derived from handler assessments at the proposed rate, along with interest income, and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently about $230,000) are expected to be kept within the maximum permitted by the Order (approximately three fiscal years' expenses as authorized in § 915.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. Dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS evaluates Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2022–23 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by AMS.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 315 growers of Florida avocados in the production area and 24 handlers subject to regulation under the Order. Small agricultural growers are defined by the Small Business Administration (SBA) as those having annual receipts less than $1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistical Service, the average grower price paid for Florida avocados during the 2020–21 season was $21.97 per 55-pound container. Utilized production was equivalent to 624,364 55-pound containers for a total value of over $13,717,277 ($21.97 multiplied by 624,364 55-pound containers equals $13,717,277). Dividing the crop value by the estimated number of growers yields an estimated average receipt per grower of $43,547 ($13,717,277 divided by 315), so the majority of growers would have annual receipts of less than $1,000,000.

AMS Market News reported April 2021 terminal market prices for green skinned avocados were about $83.60 per 55-pound container. Using this price and the total utilization, the total 2020–21 handler crop value is estimated at $52.2 million ($83.60 multiplied by 624,364 55-pound containers equals $52.2 million). Dividing this figure by the number of handlers yields an estimated average annual handler receipt of $2.18 million ($52.2 million divided by 24), which is below the SBA threshold for small agricultural service firms. Thus, the majority of Florida avocado growers and handlers may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2022–23 and subsequent fiscal years from $0.45 to $0.50 per 55-pound container or equivalent of avocados. The Committee recommended 2022–23 expenditures of $268,484 and an assessment rate of $0.50 per 55-pound container or equivalent of avocados. The proposed assessment rate of $0.50 is $0.05 higher than the previous rate. The quantity of assessable avocados for the 2022–23 season is estimated at 500,000 55-pound containers. Thus, the $0.50 rate should provide $250,000 in assessment income. Income derived from handler assessments, along with interest income, and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

Major expenditures recommended by the Committee for the 2022–23 fiscal year include $116,164 for salaries, $53,350 for employee benefits, and $26,500 for office rent and supplies. Budgeted expenses for these items in 2021–22 were $116,164, $53,350, and $26,500, respectively.

The Committee recommended increasing the assessment based on the 2022–23 crop estimate of 500,000 55-pound containers, which is a decrease from the 800,000 55-pound containers estimated for the previous year. At the current assessment rate, assessment income would equal $225,000, an amount insufficient to cover the Committee's anticipated expenditures of $268,484. By increasing the assessment rate by $0.05, assessment income would be $250,000, which would reduce the amount of funds needed from reserves. This amount, along with interest income, and funds from reserve, should provide sufficient funds to meet 2022–23 anticipated expenses.

Prior to arriving at this budget and assessment rate, the Committee considered maintaining the current assessment rate of $0.45. The Committee ultimately determined that leaving the assessment unchanged would not

generate sufficient revenue to meet the Committee's 2022–23 expenditures of $268,484. Therefore, the Committee rejected the idea of maintaining the current assessment rate.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2022–23 season should be around $22.50 per 55-pound container or equivalent of avocados. The proposed assessment rate of $0.50 per 55-pound container or equivalent of avocados represents 2.2 percent of the $22.50 estimated average grower price ($0.50 divided by $22.50 × 100).

This action would increase the assessment obligation imposed on handlers. While assessments impose additional costs on handlers, the costs are minimal and uniform on all handlers, and some of the costs may be passed on to growers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 12, 2022, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189 Fruit Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 915 as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2022, an assessment rate of $0.50 per 55-pound container or equivalent is established for avocados grown in South Florida.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–08606 Filed 4–21–22; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 3

[Docket No. APHIS–2020–0068]

RIN 0579–AE61

Standards for Birds Not Bred for Use in Research Under the Animal Welfare Act

AGENCY: Animal and Plant Health Inspection Service, Agriculture (USDA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would revise the regulations to establish standards governing the humane handling, care, treatment, and transportation of birds, excluding birds bred for use in research, covered under the Animal Welfare Act. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the proposed rule published on February 22, 2022 (87 FR 9880–9913) is extended. We will consider all comments that we receive on or before May 25, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2020–0068 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0068, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *Regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Cody M. Yager, DVM, Supervisory Animal Care Specialist, Animal Care, APHIS, 4700 River Road, Unit 84, Riverdale, MD 20737; (970) 494–7478; *cody.m.yager@usda.gov.* Secondary Contact: Dr. David Miller, DVM, Ph.D., National Animal Welfare Specialist, Animal Care, APHIS, 2150 Centre Ave., Building B, Mailstop 3W11, Fort Collins, CO 80526; (970) 494–7478; *david.s.miller@usda.gov.*

SUPPLEMENTARY INFORMATION: On February 22, 2022, we published in the **Federal Register** (87 FR 9880–9913, Docket No. APHIS–2020–0068) a proposal [1] to revise the animal welfare regulations by establishing standards governing the humane handling, care, treatment, and transportation of birds, excluding birds bred for use in research, covered under the Animal Welfare Act.

Comments on the proposed rule were required to be received on or before

[1] To view the proposal, supporting documents, and public comments, go to *www.regulations.gov.* Enter APHIS–2020–0068 in the Search field.

April 25, 2022. We are extending the comment period on Docket No. APHIS–2020–0068 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 15th day of April 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–08642 Filed 4–21–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0462; Project Identifier MCAI–2021–00647–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–700, 737–800, 747–400, 747–8, 767–400ER, and 777–200 airplanes. This proposed AD was prompted by a report that there is the potential for electrical current to pass through low pressure (LP) oxygen flex-hoses in the gaseous passenger oxygen system. This proposed AD would require replacing each conductive oxygen flex-hose installed on LP gaseous passenger oxygen systems with a serviceable non-conductive oxygen flex-hose. This proposed AD would also prohibit installation of a conductive oxygen flex-hose on LP gaseous passenger oxygen systems. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 6, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Lufthansa Technik AG, Weg beim Jäger 193 22335 Hamburg, Germany; telephone 49–40–5070–67428; internet *https://www.lufthansa-technik.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0462; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0462; Project Identifier MCAI–2021–00647–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0135, dated June 2, 2021 (EASA AD 2021–0135) (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain The Boeing Company Model 737–700, 737–800, 747–400, 747–8, 767–400ER, and 777–200 airplanes with certain Lufthansa Technik AG supplemental type certificates (STCs). Those STCs are not validated by the FAA; this proposed AD therefore refers to the corresponding FAA STC, STC ST04127NY, instead in the applicability. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0462.

This proposed AD was prompted by a report that there is the potential for electrical current to pass through LP oxygen flex-hoses in the gaseous passenger oxygen system. Exposure to electrical faults, such as unintended short circuits, can result in localized electrical heating of the LP oxygen flex-hoses. The FAA issued AD 2018–09–12, Amendment 39–19269 (83 FR 22360,

May 15, 2018) (AD 2018–09–12), for certain The Boeing Company Model 747–200B, –300, and –400 series airplanes; and AD 2019–25–12, Amendment 39–21010 (85 FR 449, dated January 6, 2020) (AD 2019–25–12), for certain The Boeing Company Model 777–200 and –300ER series airplanes. AD 2018–09–12 and AD 2019–25–12 require replacing the LP oxygen flex-hoses with new non-conductive LP oxygen flex-hoses in the gaseous passenger oxygen system in airplanes equipped with therapeutic oxygen. The same conductive oxygen flex-hoses affected by those ADs have also been installed on airplanes modified by the Lufthansa Technik AG STCs and FAA STC that are the subject of this AD but were not part of the applicability of AD 2018–09–12 and AD 2019–25–12. The FAA is proposing this AD to address the possibility of electrical current passing through the LP oxygen flex-hoses in the gaseous passenger oxygen system, which could cause the flex-hoses to melt or burn and result in an oxygen-fed fire in the passenger cabin. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Lufthansa Technik AG has issued the following service information.

- Lufthansa Technik Design Change Summary ASN–00–DCS–01, Revision 8, dated November 5, 2020.
- Lufthansa Technik Design Change Summary ATB–25–DCS–01, Revision 10, dated January 7, 2021.
- Lufthansa Technik Design Change Summary ATR–23–DCS–01, Revision 2, dated January 21, 2021.
- Lufthansa Technik Design Change Summary BCM–35–DCS–01, dated January 4, 2021.
- Lufthansa Technik Design Change Summary BCP–35–DCS–01, Revision 1, dated April 20, 2021.
- Lufthansa Technik Design Change Summary BCQ–35–DCS–01, Revision 1, dated April 20, 2021.
- Lufthansa Technik Design Change Summary BCR–35–DCS–01, Revision 1, dated April 20, 2021.
- Lufthansa Technik Design Change Summary BCS–35–DCS–01, dated January 5, 2021.
- Lufthansa Technik Design Change Summary BCU–35–DCS–01, dated January 5, 2021.
- Lufthansa Technik Design Change Summary BCV–35–DCS–01, dated February 4, 2021.
- Lufthansa Technik Design Change Summary BCW–35–DCS–01, dated January 4, 2021.
- Lufthansa Technik Design Change Summary BCX–35–DCS–01, Revision 1, dated February 4, 2021.

This service information describes procedures for replacing each conductive oxygen flex-hose installed on LP gaseous passenger oxygen systems with a serviceable non-conductive oxygen flex-hose. These documents are distinct since they apply to different airplane models and manufacturer serial numbers.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would also prohibit installation of a conductive oxygen flex-hose on LP gaseous passenger oxygen systems.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 7 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 17 work-hours × $85 per hour = Up to $1,445	$10,090	Up to $11,535	Up to $80,745.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

The Boeing Company: Docket No. FAA–2022–0462; Project Identifier MCAI–2021–00647–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–700, 737–800, 747–400, 747–8, 767–400ER, and 777–200 airplanes, certificated in any category, manufacturer serial numbers (MSN) 28551, 28961, 29953, 30791, 30884, 32445, 32575, 32915, 32970, 32971, 33010, 33102, 33361, 33684, 34205, 37500, and 37544, modified by FAA supplemental type certificate (STC) ST04127NY.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a report that there is the potential for electrical current to pass through low pressure (LP) oxygen flex-hoses in the gaseous passenger oxygen system. The FAA is issuing this AD to address this condition, which could cause the flex-hoses to melt or burn and result in an oxygen-fed fire in the passenger cabin.

(f) Compliance

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

(g) Replacement

Within 48 months after the effective date of this AD: Replace each conductive oxygen flex-hose installed on LP gaseous passenger oxygen systems with a serviceable non-conductive oxygen flex-hose, in accordance with the Accomplishment Instructions of the applicable Lufthansa Technik Design Change Summary (TS–145 Installation Document Number) corresponding to the affected part numbers specified in figure 1 to paragraph (g) of this AD.

BILLING CODE 4910–13–P

Figure 1 to paragraph (g) – *Service Information*[1]

Model–	Lufthansa Technik Design Change Summary –	Prohibited Conductive Oxygen Flex-Hose Having Part Number (P/N) –	Serviceable Non-Conductive Flex-Hose Having Part Number (P/N) –
737-700 airplanes	BCP-35-DCS-01, Revision 1, dated April 20, 2021	57034-xxx (except for P/N 57034-xxNxxx, which is already a non-conductive hose)	57211Nxxx
737-800 airplanes	BCQ-35-DCS-01, Revision 1, dated April 20, 2021	38001-xxx (except for P/N 38001-6xx, which is already a non-conductive hose)	38055xxxN
			57211Nxxx
	BCR-35-DCS-01, Revision 1, dated April 20, 2021	38001-xxx (except for P/N 38001-6xx, which is already a non-conductive hose)	38055xxxN
		57034-xxx (except for P/N 57034-xxNxxx, which is already a non-conductive hose	57211Nxxx
		57211-xxx	
	BCS-35-DCS-01, dated January 5, 2021	57034-xxx (except for P/N 57034-xxNxxx, which is already a non-conductive hose)	57211Nxxx
		38001-xxx (except for P/N 38001-6xx, which is already a non-conductive hose)	38055xxxN

Model–	Lufthansa Technik Design Change Summary –	Prohibited Conductive Oxygen Flex-Hose Having Part Number (P/N) –	Serviceable Non-Conductive Flex-Hose Having Part Number (P/N) –
747-400 airplanes	BCX-35-DCS-01, Revision 1, dated February 4, 2021	38001-xxx (except for P/N 38001-6xx, which is already a non-conductive hose)	38055xxxN
			57297Nxxx
		57034-xxx (except for P/N 57034-xxNxxx, which is already a non-conductive hose)	57211Nxxx
	BCU-35-DCS-01, dated January 5, 2021	38001-xxx (except for P/N 38001-6xx, which is already a non-conductive hose)	38055xxxN
		57034-xxx (except for P/N 57034-xxNxxx, which is already a non-conductive hose)	57211Nxxx
		55017-xxx	
		57211-xxx	
	BCV-35-DCS-01, dated February 4, 2021	38001-xxx (except for P/N 38001-6xx, which is already a non-conductive hose)	38055xxxN
			57297Nxxx
		55017-xxx	57211Nxxx
		57211-xxx	
	BCW-35-DCS-01, dated January 4, 2021	57021-xxx	57211Nxxx
		57211-xxx	
747-8 airplanes	ASN-00-DCS-01, Revision 8, dated November 5, 2020	57034-xxx (except for P/N 57034-xxNxxx, which is already a non-conductive hose)	57297Nxxx
	ATB-25-DCS-01, Revision 10, dated January 7, 2021	57034-xxx (except for P/N 57034-xxNxxx, which is already a non-conductive hose)	57297Nxxx
		57021-xxx	57211Nxxx
767-400ER airplanes	ATR-23-DCS-01, Revision 2, dated January 21, 2021	60B50060-x	57297Nxxx
777-200 airplanes	BCM-35-DCS-01, dated January 4, 2021	57034-xxx (except for P/N 57034-xxNxxx, which is already a non-conductive hose)	57297Nxxx
		57071-xxx	57211Nxxx
		57073-xxx	

[1] The "x" used in this figure can be any combination and number of numerals and letters.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install a prohibited conductive oxygen flex-hose specified in figure 1 to paragraph (g) of this AD, on LP gaseous passenger oxygen systems on any airplane.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information in paragraphs (i)(1) through (6) of this AD.

(1) Lufthansa Technik Design Change Summary ASN–00–DCS–01, Revision 6, dated June 25, 2020.

(2) Lufthansa Technik Design Change Summary ASN–00–DCS–01, Revision 7, dated August 26, 2020.

(3) Lufthansa Technik Design Change Summary BCP–35–DCS–01, dated January 5, 2021.

(4) Lufthansa Technik Design Change Summary BCQ–35–DCS–01, dated January 7, 2021.

(5) Lufthansa Technik Design Change Summary BCR–35–DCS–01, dated January 7, 2021.

(6) Lufthansa Technik Design Change Summary BCX–35–DCS–01, dated January 7, 2021.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or the European Union Aviation Safety Agency (EASA); or Lufthansa Technik AG's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2021–0135, dated June 2, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0462.

(2) For more information about this AD, contact Chirayu Gupta, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Lufthansa Technik AG, Weg beim Jäger 193 22335 Hamburg, Germany; telephone 49–40–5070–67428; internet *https://www.lufthansa-technik.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on April 11, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08584 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1074; Project Identifier MCAI–2021–00447–R]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: The FAA is revising a notice of proposed rulemaking (NPRM) that applied to certain Bell Textron Canada Limited Model 429 helicopters. This action revises the NPRM by revising the Required Actions paragraphs to include calendar compliance times. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the agency is requesting comments on this SNPRM.

DATES: The FAA must receive comments on this SNPRM by June 6, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this SNPRM, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1074; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, this SNPRM, the Transport Canada AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–1074; Project Identifier MCAI–2021–00447–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may again revise this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

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 SNPRM 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 SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this SNPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to Bell Textron Canada Limited Model 429 helicopters, serial numbers (S/N) 57001 and subsequent. The NPRM published in the **Federal Register** on December 23, 2021 (86 FR 72891). In the NPRM, the FAA proposed to require visually inspecting the external surface of the tail rotor (TR) gearbox support assembly, borescope inspecting or visually inspecting the inside of the tailboom for certain conditions, and performing a tactile inspection. Depending on the results of the inspections, the NPRM proposed to require removing certain rivets from service or repairing gaps in accordance with FAA-approved methods. The NPRM also proposed to require repeating these inspections within certain intervals.

The NPRM was prompted by Transport Canada AD CF–2021–15, dated April 14, 2021 (Transport Canada AD CF–2021–15), issued by Transport Canada, which is the aviation authority for Canada, to correct an unsafe condition for Bell Textron Canada Limited Model 429 helicopters, S/N 57001 and subsequent. Transport Canada advises of multiple in-service reports of failed rivets at the joint between the tailboom skin and the TR gearbox support assembly part number (P/N) 429–034–701–101 or P/N 429–035–705–101. Transport Canada states that in-service reports also revealed a quality escape resulted in a gapping condition between the tailboom skin and the TR gearbox support fitting at some locations around the joint, and that rivets of inadequate grip length have been installed at the affected joint. This condition, if not addressed, could result in progressive deterioration of the joint structural integrity, detachment of the TR gearbox support assembly and loss of control of the helicopter.

Accordingly, Transport Canada AD CF–2021–15 requires, for certain serial-numbered helicopters, an initial visual inspection of the rivets at the TR gearbox support assembly for signs of failed rivets or inadequate grip length. Transport Canada AD CF–2021–15 also requires, for all serial-numbered helicopters defined in the applicability, repeating the initial visual inspection at intervals not to exceed 400 hours air time or 12 months, whichever occurs first. Transport Canada AD CF–2021–15 also requires repair or replacement of affected parts if discrepancies are found. Transport Canada considers its AD an interim action and stated that further AD action may follow.

Actions Since the NPRM Was Issued

Since the NPRM was issued, the FAA determined that due to thermal cycling the compliance times in the NPRM should be revised to include calendar compliance times. According to Bell, thermal cycling is independent of flight hours (FH) and can occur when an aircraft is stationary and is also a significant contributor to the unsafe condition. Accordingly, the FAA has determined the proposed paragraph (g) of the proposed AD must be revised by including calendar compliance times.

Also, since the NPRM was issued, the FAA determined the proposed paragraph (g)(1)(iii) of the proposed AD must be revised by deleting the word ''not'' when referring to whether or not a rivet comes out when pulled with pliers or when pulled by hand. This wording was a minor editorial error and the correct wording should only state ''does.''

Comments

The following discussion presents the comments received on the NPRM and the FAA's response.

Request To Revise the Required Actions Paragraphs of the Proposed AD

Bell requested that the FAA revise the Required Actions paragraphs of the proposed NPRM dealing with the compliance time intervals by including the calendar compliance time. The commenter explained the reasoning for calendar intervals is based on thermal cycling, which could be a contributing factor to the rivets failing. The commenter further stated thermal cycling can occur when the aircraft is stationary.

The FAA agrees and has revised the Required Actions paragraphs in this proposed AD to include calendar compliance times, which correspond to the compliance times specified in Transport Canada AD CF–2021–15. Since the calendar time is a component of the unsafe condition, the FAA has determined there should be no differences between this proposed AD and the Transport Canada AD in regards to the calendar compliance time. The FAA also revised the Differences Between this SNPRM and Transport Canada AD CF–2021–15 paragraph in this proposed AD by deleting the paragraphs associated with the calendar interval differences.

Bell requested that the FAA revise the Required Actions paragraphs of the proposed AD by including instructions to replace any rivet that is removed from service. The commenter stated missing or defective rivets without a gapping condition should be replaced in accordance with a Bell structural repair manual; and missing or defective rivets with excessive gapping should be repaired by contacting Bell for an approved repair method for the gapping condition and replacement of the rivets.

The FAA disagrees. For the excessive gapping condition, paragraph (g)(1)(i)(B) of this proposed AD requires operators to repair the gaps in accordance with an FAA-approved method. The FAA does not require operators to contact Bell for approved repair methods. Where the commenter refers to replacing rivets for certain conditions, paragraphs (g)(1)(i)(A), (g)(1)(i)(B), (g)(1)(ii)(B), and (g)(1)(iii) of this proposed AD only require that operators remove the rivets from service. This proposed AD does mandate the method that operators must use to replace removed rivets. To replace rivets, operators are expected to use FAA-accepted methods, such as a Bell structural repair manual.

Bell requested that the FAA revise the Required Actions paragraph of the proposed NPRM by deleting ''not'' in paragraph (g)(1)(iii) of the proposed AD and only keeping ''does.'' The commenter stated that this inspection is to ensure that the rivets heads are not fractured, and if the rivet does come out when pulled with pliers or when pulled by hand, then the rivet should be removed from service.

The FAA agrees and has revised paragraph (g)(1)(iii) of this proposed AD by deleting ''does not'' and replacing it with ''does.'' The FAA intended to correspond with the actions specified Bell Alert Service Bulletin (ASB) 429–19–47, Revision B, dated January 27, 2021 (ASB 429–19–47 Rev B), and misinterpreted the discrepant condition for the tactile inspection.

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after determining the unsafe condition described previously is likely to exist or develop in other helicopters of the same type design. Certain changes described above expand the scope of the NPRM. As a result, it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed ASB 429–19–47 Rev B. This service information specifies procedures for an initial and repetitive general visual inspections and detailed inspections of the affected rivets at the joint between the tailboom skin and the TR gearbox support assembly. This service information also specifies procedures for replacing the affected rivets and repairing the gaps in accordance with an approved Bell structural repair scheme.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA also reviewed Bell ASB 429–19–47, dated August 28, 2019 (ASB 429–19–47), and Bell ASB 429–19–47, Revision A, dated November 2, 2020 (ASB 429–19–47 Rev A). ASB 429–19–47 specifies the same general visual inspection as ASB 429–19–47 Rev A however, ASB 429–19–47 Rev A introduces a repetitive inspection and specifies corrective actions if any discrepant rivets are found. ASB 429–19–47 Rev A specifies the same procedures for the initial and repetitive general visual inspections and detailed inspections as ASB 429–19–47 Rev B however, ASB 429–19–47 Rev B revises the compliance section, description section, and materials section, and also the accomplishment instructions.

Proposed AD Requirements in This SNPRM

For Model 429 helicopters with S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that, as of the effective date of this proposed AD, have accumulated less than 300 total hours time-in-service (TIS), within 100 hours TIS or 6 months after accumulating 300 total hours TIS, whichever occurs first; or for Model 429 helicopters with S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that, as of the effective date of this proposed AD, have replaced certain part-numbered TR gearbox support assemblies and the helicopter has accumulated less than 300 total hours TIS since the replacement of the TR gearbox support assembly, within 100 hours TIS or 6 months after accumulating 300 total hours TIS since the replacement, whichever occurs first, this proposed AD would require visually inspecting the external surface of the TR gearbox support assembly for any rivet heads that have separated from their tail, measuring any gaps, and before further flight, removing affected rivets from service or repairing gaps in accordance with FAA-approved methods.

This proposed AD would also require either borescope inspecting or using a light source and mirror to visually inspect each rivet inside the tailboom for missing rivet tails, rivet tails not resting against the tailboom skin, and any rivet tails resting at the bottom of the tailboom. Depending on the inspection results, this proposed AD would require, before further flight, additional inspections or removing certain parts from service. This proposed AD would require performing a tactile inspection of certain rivets identified in the applicable service information and depending on the inspection results, removing rivets from service before further flight.

For Model 429 helicopters with S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that are not identified in paragraph (g)(1) of this proposed AD, this proposed AD would require, within 100 hours TIS or 6 months after the effective date of this proposed AD, whichever occurs first, performing the visual inspection of the TR gearbox support assembly, visually inspecting or borescope inspecting each rivet inside the tailboom, performing the tactile inspection, and accomplishing the applicable corrective actions described previously.

For Model 429 helicopters S/N 57002 through 57210 inclusive and S/N 57212 and subsequent, this proposed AD would require, within 400 hours TIS or 12 months, whichever occurs first after the initial inspections required by this proposed AD, as applicable to your helicopter, and thereafter at intervals not to exceed 400 hours TIS or 12 months, whichever occurs first, performing the visual inspection of the TR gearbox support assembly, visually inspecting or borescope inspecting each rivet inside the tailboom, performing the tactile inspection, and accomplishing the applicable corrective actions described previously.

For Model 429 helicopters S/N 57001 and 57211, this proposed AD would require, within 400 hours TIS or 12 months after the effective date of this proposed AD, whichever occurs first, and thereafter at intervals not to exceed 400 hours TIS or 12 months, whichever occurs first, performing the visual inspection of the TR gearbox support assembly, visually inspecting or borescope inspecting each rivet inside the tailboom, performing the tactile inspection, and accomplishing the applicable corrective actions described previously.

Differences Between This SNPRM and Transport Canada AD CF–2021–15

Transport Canada AD CF–2021–15 requires replacing any rivets, and repairing any gaps that exceed 0.005 in (0.127 mm), in accordance with an approved Bell structural repair scheme, and submitting certain information to the manufacturer, whereas this proposed AD would require removing the rivets from service and repairing the gaps using an FAA-approved method instead. Transport Canada AD CF–2021–15 requires replacing any rivets if any gaps are 0.005 in (0.127mm) or less, whereas this proposed AD would require removing the rivets from service.

Interim Action

The FAA considers this proposed AD would be an interim action. Once final action has been identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 120 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Visually inspecting the surface of the TR gearbox support assembly would take about 0.5 work-hour for an estimated cost of $43 per inspection and $5,160 for the U.S. fleet per inspection.

If required, replacing any affected rivets would take about 1 work-hour and parts would cost about $110 per rivet for an estimated cost of $195 per rivet replacement.

If required, measuring gaps would take about 0.5 work-hour for an estimated cost of $43 per helicopter.

If required, repairing any gaps would take up to about 1 work-hour for an estimated cost of up to $85 per repair.

Visually inspecting or borescope inspecting the inside of the tailboom would take about 0.5 work-hour for an estimated cost of $43 per inspection and $5,160 for the U.S. fleet per inspection.

Performing a tactile inspection would take about 0.5 work-hour for an estimated cost of $43 per inspection and $5,160 for the U.S. fleet per inspection.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Bell Textron Canada Limited: Docket No. FAA–2021–1074; Project Identifier MCAI–2021–00447–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by June 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bell Textron Canada Limited Model 429 helicopters, serial numbers (S/N) 57001 and subsequent, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 5302, Rotorcraft tail boom.

(e) Unsafe Condition

This AD was prompted by reports of failed rivets between the tailboom skin and the tail rotor (TR) gearbox support assembly. The FAA is issuing this AD to detect failed rivets and rivets with inadequate grip length. The unsafe condition, if not addressed, could result in deterioration of the joint structural integrity, detachment of the TR gearbox support assembly, and loss of helicopter control.

(f) Compliance

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

(g) Required Actions

(1) As of the effective date of this AD, for Model 429 helicopters S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that have accumulated less than 300 total hours time-in-service (TIS), within 100 hours TIS or 6 months after accumulating 300 total hours TIS, whichever occurs first; or for Model 429 helicopters S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that have replaced the TR gearbox support assembly part number (P/N) 429–034–701–101 or P/N 429–035–705–101 and the helicopter has accumulated less than 300 total hours TIS since the replacement of the TR gearbox support assembly, within 100 hours TIS or 6 months after accumulating 300 total hours TIS since the replacement, whichever occurs first:

(i) Visually inspect the external surface of the TR gearbox support assembly for any rivet heads that have separated from their tail. If there are any rivet heads that have separated from their tail, before further flight, measure any gaps between the TR gearbox support assembly and the tailboom skin by following the Accomplishment Instructions, Part I, paragraphs 9.b. through 9.d. of Bell Alert Service Bulletin 429–19–47, Revision B, dated January 27, 2021 (ASB 429–19–47 Rev B).

(A) If there are no gaps or if any gap measures less than 0.005 in (0.127 mm), before further flight, remove the rivets from service.

(B) If there are any gaps that are equal to or exceed 0.005 in (0.127 mm), before further flight, repair the gaps in accordance with an FAA-approved method, and remove the rivets from service.

(ii) Borescope inspect or use a light source and mirror to visually inspect each rivet inside the tailboom for any missing rivet tails, any rivet tails resting at the bottom of the tailboom, and any rivet tails not resting against the tailboom skin.

(A) If there are any missing rivet tails, or any rivet tails resting at the bottom of the tailboom, before further flight, measure any gaps between the TR gearbox support assembly and the tailboom skin by following the Accomplishment Instructions, Part I, paragraphs 9.b. through 9.d. of ASB 429–19–47 Rev B, and perform the corrective actions specified in paragraphs (g)(1)(i)(A) or (B) of this AD as applicable.

(B) If there are any rivet tails not resting against the tailboom skin, before further flight, remove the rivets from service.

(iii) Perform a tactile inspection of the rivets identified in Figure 1 of ASB 429–19–47 Rev B, by pulling on each rivet tail with pliers or pulling by hand. If any rivet does come out when pulled with pliers or when pulled by hand, before further flight, remove the rivet from service.

(2) For Model 429 helicopters S/N 57002 through 57210 inclusive and S/N 57212 and subsequent that are not identified in paragraph (g)(1) of this AD, within 100 hours TIS or 6 months after the effective date of this AD, whichever occurs first, perform the actions as specified in paragraph (g)(1)(i) through (iii) of this AD.

(3) For Model 429 helicopters S/N 57002 through 57210 inclusive and S/N 57212 and subsequent, within 400 hours TIS or 12 months, whichever occurs first after the initial inspections required by paragraph (g)(1) or (2) of this AD, as applicable to your helicopter, and thereafter at intervals not to exceed 400 hours TIS or 12 months, whichever occurs first, accomplish the actions required by paragraphs (g)(1)(i) through (iii) of this AD.

(4) For Model 429 helicopters S/N 57001 and 57211, within 400 hours TIS or 12 months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 400 hours TIS or 12 months, whichever occurs first, accomplish the actions required by paragraphs (g)(1)(i) through (iii) of this AD.

(h) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g)(1) and (2) of this AD, if those actions were performed before the effective date of this AD using Bell Alert Service Bulletin 429–19–47, Revision A, dated November 2, 2020; or Bell Alert

Service Bulletin 429–19–47, dated August 28, 2019.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(2) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(3) The subject of this AD is addressed in Transport Canada AD CF–2021–15, dated April 14, 2021. You may view the Transport Canada AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–1074.

Issued on April 15, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08561 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0468; Project Identifier MCAI–2021–01243–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2018–13–08 which applies to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2018–13–08 requires repetitive inspections for cracking of the radius of the front spar vertical stringers and the horizontal floor beam on frame (FR) 36, repetitive inspections for cracking of the fastener holes of the front spar vertical stringers on FR 36, and repair if necessary, and, for certain airplanes, a potential terminating action modification of the center wing box area. Since the FAA issued AD 2018–13–08, Airbus has determined that additional airplanes are subject to the unsafe condition. This proposed AD would revise the applicability by adding airplanes and retain the requirements of AD 2018–13–08, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by June 6, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this IBR material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0468.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0468; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0468; Project Identifier MCAI–2021–01243–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://*

www.regulations.gov, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 206–231–3229; email *vladimir.ulyanov@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Discussion

The FAA issued AD 2018–13–08, Amendment 39–19320 (83 FR 33809, July 18, 2018) (AD 2018–13–08) which applies to certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2018–13–08 requires repetitive inspections for cracking of the radius of the front spar vertical stringers and the horizontal floor beam on FR 36, repetitive inspections for cracking of the fastener holes of the front spar vertical stringers on FR 36, and repair if necessary, and, for certain airplanes, a potential terminating action modification of the center wing box area. The FAA issued AD 2018–13–08 to address fatigue cracking of the front spar vertical stringers on the wings, which could result in the reduced structural integrity of the airplane.

Actions Since AD 2018–13–08 Was Issued

Since the FAA issued AD 2018–13–08, Airbus has determined that Model A321 airplanes that have incorporated modification 160021 (structural reinforcement for Airbus SAS Model A321 airplanes sharklet installation) are also subject to the identified unsafe condition. In addition, Airbus determined that, for airplanes in configuration 5, 6, or 7, an optional modification of the center wing box after accumulating a certain number of total flight cycles and total flight hours terminates the repetitive inspections.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0241, dated November 8, 2021 (EASA AD 2021–0241) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain Airbus SAS Model A318 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. EASA AD 2021–0241 supersedes EASA AD 2017–0099, dated June 8, 2017 (which corresponds to FAA AD 2018–13–08). Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report that, during a center fuselage certification full-scale fatigue test, cracks were found on the front spar vertical stringer at a certain frame. This proposed AD was also prompted by a determination that Model A321 airplanes that have incorporated modification 160021 are also subject to the unsafe condition. The FAA is proposing this AD to address fatigue cracking of the front spar vertical stringers on the wings, which, if not corrected, could result in the reduced structural integrity of the airplane. See the MCAI for additional background information.

Model A320–216 Airplanes

The Airbus SAS Model A320–216 was U.S. type certificated on December 19, 2016. Before that date, any EASA ADs that affected Model A320–216 airplanes were included in the U.S. type certificate as part of the Required Airworthiness Actions List (RAAL). One or more Model A320–216 airplanes have subsequently been placed on the U.S. Register, and will now be included in FAA AD actions. For Model A320–216 airplanes, the requirements that correspond to AD 2018–13–08 were mandated by the MCAI via the RAAL. Although that RAAL requirement is still in effect, for continuity and clarity the FAA has identified Model A320–216 airplanes in paragraph (c) of this proposed AD; the MCAI that is specified in paragraph (g) in this proposed AD includes retained requirements, which would therefore apply to those airplanes.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2018–13–08, this proposed AD would retain all of the requirements of AD 2018–13–08. Those requirements are referenced in EASA AD 2021–0241, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0241 describes procedures for repetitive special detailed inspections for cracking of the radius of the front spar vertical stringers, horizontal floor beam radius and fastener holes of the front spear vertical stringers on frame 36. EASA AD 2021–0241 further describes procedures for repetitive high frequency eddy current (HFEC) for cracking of the horizontal floor beam, repetitive HFEC inspections for cracking of the fastener holes of the front spar vertical stringers on FR 36, repetitive rototest inspections of the fastener holes of the spar vertical stringers, and repair. EASA AD 2021–0241 also describes procedures for the modification of the center wing box area. The modification is required for airplanes in configuration 1, 2 or 3; and for airplanes in configuration 5, 6, or 7, the modification is optional and is a terminating action for the repetitive inspections when done within a specified time frame. The modification includes related investigative and corrective actions. Related investigative actions include an HFEC inspection on the radius of the rib flanges, a rototest inspection of the fastener holes, detailed and HFEC inspections for cracking on the cut edges, detailed and rototest inspections on all open fastener holes, and an inspection to determine if secondary structure brackets are installed. Corrective actions include reworking the secondary structure bracket and repair. This material is reasonably available because the interested parties have access to it through their normal course of business

or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is proposing this AD because the FAA evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0241 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0241 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0241 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0241 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0241. Service information required by EASA AD2021–0241 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0468 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 1,549 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2018–03–08.	Up to 273 work-hours × $85 per hour = $23,205.	$87,500	Up to $110,705	Up to $1,107,050 for certain airplanes.*
New proposed inspections	25 work-hours × $85 per hour = $2,125	$100	$2,225	$3,446,525.
New proposed modification (5 airplanes).	Up to 403 work-hours × $85 per hour = $34,255.	Up to $316,900	Up to $351,1555	Up to $1,755,775.

*This estimate is based on the determination in AD 2018–13–08 that only 10 airplanes of U.S. registry needed to accomplish all required actions, including the modification; other airplanes were only required to accomplish the terminating actions.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
Up to 409 work-hours × $85 per hour = $34,765	Up to $66,050	Up to $100,815.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2018–13–08, Amendment 39–19320; (83 FR 33809, July 18, 2018); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2022–0468; Project Identifier MCAI–2021–01243–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 6, 2022.

(b) Affected ADs

This AD replaces AD 2018–13–08, Amendment 39–19320 (83 FR 33809, July 18, 2018) (AD 2018–13–08).

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2021–0241, dated November 8, 2021 (EASA AD 2021–0241).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a report that, during a center fuselage certification full-scale fatigue test, cracks were found on the front spar vertical stringer at a certain frame. This AD was also prompted by a determination that Model A321 airplanes that have incorporated modification 160021 are also subject to the unsafe condition. The FAA is issuing this AD to address fatigue cracking of the front spar vertical stringers on the wings, which, if not corrected, could result in the reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0241.

(h) Exceptions to EASA AD 2021–0241

(1) Where EASA AD 2021–0241 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0241 does not apply to this AD.

(3) Where paragraph (3) of EASA AD 2021–0241 specifies actions for airplanes repaired ''in accordance with instructions approved by EASA or approved under Airbus DOA,'' for this AD use ''using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.''

(4) Where paragraph (4) of EASA AD 2021–0241 specifies to ''contact Airbus for approved corrective action instructions and accomplish those instructions accordingly'' if cracks are detected, for this AD if any cracking is detected, the cracking must be repaired before further flight using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(5) Where paragraph (8) of EASA AD 2021–0241 specifies actions for airplanes inspected by additional instructions ''approved before the effective date of this AD by Airbus DOA,'' for this AD use ''approved before the effective date of this AD by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.''

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0241 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(ii) AMOCs approved previously for AD 2018–13–08 are approved as AMOCs for the corresponding provisions of EASA AD 2021–0241 that are required by paragraph (g) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2021–0241 that contains RC procedures and tests: Except as required by paragraph (j)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

(1) For information about EASA AD 2021–0241, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0468.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

Issued on April 15, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08585 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0141]

RIN 1625–AA08

Special Local Regulation; Back River, Baltimore County, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish temporary special local

regulations for certain waters of Back River. This action is necessary to provide for the safety of life on these navigable waters located in Baltimore County, MD, during activities associated with an air show event from July 15, 2022, through July 17, 2022. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 23, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0141 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *D05-DG-SectorMD-NCR-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

Tiki Lee's Dock Bar of Sparrows Point, MD, and David Schultz Airshows LLC of Clearfield, PA, notified the Coast Guard that they will be conducting the 2022 Tiki Lee's Shootout on the River Airshow from 5 p.m. to 6 p.m. on July 15, 2022, from 2 p.m. to 3 p.m. on July 16, 2022, and from 2 p.m. to 3 p.m. on July 17, 2022. High speed, low-flying civilian and military aircraft air show performers will operate within a designated, marked aerobatics box located on Back River, between Lynch Point to the south and Walnut Point to the north. The event is being held adjacent to Tiki Lee's Dock Bar, 4309 Shore Road, Sparrows Point, in Baltimore County, MD. Hazards from the air show include risks of injury or death resulting from aircraft accidents, dangerous projectiles, hazardous materials spills, falling debris, and near or actual contact among participants and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. Additionally, such hazards include participants operating near a designated navigation channel, as well as operating adjacent to waterside residential communities. The COTP Maryland-National Capital Region has determined that potential hazards associated with the air show would be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of Back River.

The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 4 p.m. on July 15, 2022 through 4 p.m. on July 17, 2022. The regulations would be enforced from 4 p.m. to 7 p.m. on July 15, 2022, from 1 p.m. to 4 p.m. on July 16, 2022, and from 1 p.m. to 4 p.m. on July 17, 2022. The regulated area would cover all navigable waters of Back River within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to the point of origin, located in Baltimore County, MD. The regulated area is approximately 4,200 yards in length and 1,200 yards in width.

This proposed rule provides additional information about areas within the regulated area and their definitions. These areas include ''Aerobatics Box'' and ''Spectator Areas.''

The proposed duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after activities associated with the air show, scheduled from 5 p.m. to 6 p.m. on July 15, 2022, from 2 p.m. to 3 p.m. on July 16, 2022, and from 2 p.m. to 3 p.m. on July 17, 2022. The COTP and the Coast Guard Event PATCOM would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for 2022 Tiki Lee's Shootout on the River Airshow participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area in a manner that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels would direct spectators to the designated spectator area. Only participant vessels would be allowed to enter the aerobatics box. The Coast Guard would publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of Back River for 9 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule would allow vessels and persons to seek permission to enter the regulated area, and vessel traffic would be able to transit the regulated area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Publ. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 9 total enforcement hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment

applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0141 in the ''SEARCH'' box and click ''SEARCH.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041 ; 33 CFR 1.05–1.

■ 2. Add § 100.T05–0141 to read as follows:

§ 100.T05 –0141 2022 Tiki Lee's Shootout on the River Airshow, Back River, Baltimore County, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of Back River, within an area bounded by a line connecting the following points: from the shoreline at Lynch Point at latitude 39°14′46″ N, longitude 076°26′23″ W, thence northeast to Porter Point at latitude 39°15′13″ N, longitude 076°26′11″ W, thence north along the shoreline to Walnut Point at latitude 39°17′06″ N, longitude 076°27′04″ W, thence southwest to the shoreline at latitude 39°16′41″ N, longitude 076°27′31″ W, thence south along the shoreline to and terminating at the point of origin. The aerobatics box and spectator areas are within the regulated area.

(2) *Aerobatics Box.* The aerobatics box is a polygon in shape measuring approximately 5,000 feet in length by 1,000 feet in width. The area is bounded by a line commencing at position latitude 39°16′01.2″ N, longitude 076°27′05.7″ W, thence east to latitude 39°16′04.7″ N, longitude 076°26′53.7″ W, thence south to latitude 39°15′16.9″ N, longitude 076°26′35.2″ W, thence west to latitude 39°15′13.7″ N, longitude 076°26′47.2″ W, thence north to and terminating at the point of origin.

(3) *Spectator Areas*—(i) *East Spectator Fleet Area.* The area is a polygon in shape measuring approximately 2,200 yards in length by 450 yards in width. The area is bounded by a line commencing at position latitude 39°15′20.16″ N, longitude 076°26′17.99″ W, thence west to latitude 39°15′17.47″ N, longitude 076°26′27.41″ W, thence north to latitude 39°16′18.48″ N, longitude 076°26′48.42″ W, thence east to latitude 39°16′25.60″ N, longitude 076°26′27.14″ W, thence south to latitude 39°15′40.90″ N, longitude 076°26′31.30″ W, thence south to and terminating at the point of origin.

(ii) *Northwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 750 yards in length by 150 yards in width. The area is bounded by a line commencing at position latitude 39°16′01.64″ N, longitude 076°27′11.62″ W, thence south to latitude 39°15′47.80″ N, longitude 076°27′06.50″ W, thence southwest to latitude 39°15′40.11″ N, longitude 076°27′08.71″ W, thence northeast to latitude 39°15′45.63″ N, longitude 076°27′03.08″ W, thence northeast to latitude 39°16′01.19″ N, longitude 076°27′05.65″ W, thence west to and terminating at the point of origin.

(iii) *Southwest Spectator Fleet Area.* The area is a polygon in shape measuring approximately 400 yards in length by 175 yards in width. The area is bounded by a line commencing at position latitude 39°15′30.81″ N, longitude 076°27′05.58″ W, thence south to latitude 39°15′21.06″ N, longitude 076°26′56.14″ W, thence east to latitude 39°15′21.50″ N, longitude 076°26′52.59″ W, thence north to latitude 39°15′29.75″ N, longitude 076°26′56.12″ W, thence west to and terminating at the point of origin.

(b) *Definitions.* As used in this section—

Aerobatics Box is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of an aerobatics box within the regulated area defined by this section.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Event Patrol Commander or *Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means a person or vessel registered with the event sponsor as participating in the ''2022 Tiki Lee's Shootout on the River Airshow'' event, or otherwise designated by the event sponsor as having a function tied to the event.

Spectator means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

Spectator area is an area described by a line bound by coordinates provided in latitude and longitude within the regulated area defined by this section that outlines the boundary of an area reserved for non-participant vessels watching the event.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at

any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter a designated spectator area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels are allowed to enter and remain within the aerobatics box.

(5) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(6) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 4 p.m. to 7 p.m. on July 15, 2022, from 1 p.m. to 4 p.m. on July 16, 2022, and from 1 p.m. to 4 p.m. on July 17, 2022.

Dated: April 18, 2022.

James R. Bendle,

Commander, U.S. Coast Guard, Acting Captain of the Port Maryland-National Capital Region.

[FR Doc. 2022–08594 Filed 4–21–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0134]

RIN 1625–AA00

Safety Zone; Falls Bridge Project, Blue Hill, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for the navigable waters within a 50-yard radius from the center of the Falls Bridge in Blue Hill, ME. This action is necessary to protect personnel, vessels, and marine environment from potential hazards created by the demolition, subsequent removal, and replacement of the Falls Bridge. This proposed regulation would prohibit entry of vessels or persons into the safety zone unless authorized by the Captain of the Port Northern New England (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 23, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0134 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Shaun Doyle, Waterways Management Division, Sector Northern New England, U.S. Coast Guard; telephone 207–347–5015, email *Shaun.T.Doyle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
TIR Temporary Interim Rule
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On January 6, 2022, Maine Department of Transportation notified Sector Northern New England of an upcoming construction project on the Falls Bridge in Blue Hill, ME. The construction project consists of a complete replacement of the bridge superstructure and is scheduled to commence July 1, 2022, through June 30, 2024. The COTP has determined that the potential hazards associated with the bridge construction project will be a safety concern for anyone within a 50-yard radius from the center of the Falls Bridge in Blue Hill, ME.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 50-yard radius from the center of the Falls Bridge in Blue Hill, ME. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from July 1, 2022, through June 30, 2024. The safety zone would cover all navigable waters within a 50-yard radius from the center of the Falls Bridge located in Blue Hill, Maine. The duration of the zone is intended to ensure the safety of vessels and these navigable waters during bridge replacement. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and location of the safety zone. The safety zone would only impact a 50-yard radius from the center of the Falls Bridge in Blue Hill, ME. Local waterway use is normally recreational and public outreach performed by Maine Department of

Transportation has not identified any commercial vessel use. Proper public notice of enforcement will be given through appropriate means, which may include, but are not limited to, publication in the Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM marine channel 16.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone that would be enforced 24 hours a day from July 1, 2022, through June 30, 2024, that would prohibit entry within a 50-yard radius from the center of the Falls Bridge in Blue Hill, ME. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0134 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T01–0134 to read as follows:

§ 165.T01–0134 Safety Zone; Falls Bridge Project, Blue Hill, ME.

(a) *Locations.* The following area is a safety zone: All navigable waters from surface to bottom, within a 50-yard radius from the center of the Falls Bridge in Blue Hill, ME.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Northern New England (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM marine channel 16 or by contacting the Coast Guard Sector Northern New England Command Center at (207) 741–5465. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section is effective from July 1, 2022, through June 30, 2024, and subject to enforcement 24 hours a day. The Coast Guard will use Broadcast Notice to Mariners and Local Notice to Mariners to notify the public of this safety zone.

Dated: April 12, 2022.

A.E. Florentino,

Captain, U.S. Coast Guard, Captain of the Port Northern New England.

[FR Doc. 2022–08630 Filed 4–21–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R2–OAR–2021–0912; FRL–9613–01–R2]

Approval of Air Quality Implementation Plans; New Jersey; Removal of Excess Emissions Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Jersey, through the New Jersey Department of Environmental Protection, on December 14, 2017. The revision submitted by New Jersey was in response to a finding of substantial inadequacy and a SIP call published on June 12, 2015, for a provision in the New Jersey SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is proposing approval of the SIP revision and proposing to determine that such SIP revision corrects the deficiency identified in the June 12, 2015, SIP call.

DATES: Comments must be received on or before May 23, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2021–0912 at *https://www.regulations.gov*. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (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. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov*. 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. 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: Edward J. Linky, EPA Region 2, 290 Broadway, 25th floor, New York, New York 10007–1866, at 212–637–3764; or email *Linky.Edward@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' or ''our'' is used, it refers to EPA.

Table of Contents

I. Background

On February 22, 2013, EPA issued a **Federal Register** notice of proposed rulemaking outlining EPA's policy at the time with respect to SIP provisions related to periods of SSM. EPA analyzed specific SSM SIP provisions and explained how each one either did or did not comply with the Clean Air Act (CAA) with regard to excess emission events.[1] For each SIP provision that EPA determined to be inconsistent with the CAA, EPA proposed to find that the existing SIP provision was substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call under CAA section 110(k)(5). On September 17, 2014, EPA issued a document supplementing and revising what the Agency had previously proposed on February 22, 2013, in light of a D.C. Circuit decision that determined the CAA precludes authority of EPA to create affirmative defense provisions applicable to private civil suits. EPA outlined its updated policy that affirmative defense SIP provisions are not consistent with CAA requirements. EPA proposed in the supplemental proposal document to apply its revised interpretation of the CAA to specific affirmative defense SIP

[1] State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 78 FR 12460 (Feb. 22, 2013).

provisions and proposed SIP calls for those provisions where appropriate (79 FR 55920, September 17, 2014).

On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' (80 FR 33839, June 12, 2015), hereafter referred to as the ''2015 SSM SIP Action.'' The 2015 SSM SIP Action clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. The 2015 SSM SIP Action found that certain SIP provisions in 36 states were substantially inadequate to meet CAA requirements and issued a SIP call to those states to submit SIP revisions to address the inadequacies. EPA established an 18-month deadline by which the affected states had to submit such SIP revisions. States were required to submit corrective revisions to their SIPs in response to the SIP calls by November 22, 2016. The detailed rationale for issuing the SIP call to New Jersey can be found in the 2015 SSM SIP Action and preceding proposed actions.

EPA issued a Memorandum in October 2020 (2020 Memorandum), which stated that certain provisions governing SSM periods in SIPs could be viewed as consistent with CAA requirements.[2] Importantly, the 2020 Memorandum stated that it ''did not alter in any way the determinations made in the 2015 SSM SIP Action that identified specific state SIP provisions that were substantially inadequate to meet the requirements of the Act.'' Accordingly, the 2020 Memorandum had no direct impact on the SIP call issued to New Jersey in 2015. The 2020 Memorandum did, however, indicate EPA's intent at the time to review SIP calls that were issued in the 2015 SSM SIP Action to determine whether EPA should maintain, modify, or withdraw particular SIP calls through future agency actions.

On September 30, 2021, EPA's Deputy Administrator withdrew the 2020 Memorandum and announced EPA's return to the policy articulated in the 2015 SSM SIP Action (2021 Memorandum).[3] As articulated in the 2021 Memorandum, SIP provisions that contain exemptions or affirmative defense provisions are not consistent with CAA requirements and, therefore, generally are not approvable if contained in a SIP submission. This policy approach is intended to ensure that all communities and populations, including minority, low-income and indigenous populations overburdened by air pollution, receive the full health and environmental protections provided by the CAA.[4] The 2021 Memorandum also retracted the prior statement from the 2020 Memorandum of EPA's plans to review and potentially modify or withdraw particular SIP calls. That statement no longer reflects EPA's intent. EPA intends to implement the principles laid out in the 2015 SSM SIP Action as the agency takes action on SIP submissions, including this SIP submittal provided in response to the 2015 SIP call.

With regard to the New Jersey SIP, in the 2015 SSM SIP Action EPA determined that N.J. Admin. Code 7:27–7.2(k)(2) was substantially inadequate to meet CAA requirements (80 FR 33960). The provision provided industrial process units that have the potential to emit sulfur compounds an exemption from the otherwise applicable sulfur emission limitations where ''the discharge from any stack or chimney [has] the sole function of relieving pressure of gas, vapor or liquid under abnormal emergency conditions'' (N.J. Admin. Code 7:27–7.2(k)(2)). The rationale underlying EPA's determination that the provision was substantially inadequate to meet CAA requirements, and therefore to issue a SIP call to New Jersey to remedy the provision, is detailed in the 2015 SSM SIP Action and the accompanying proposals.

New Jersey submitted a SIP revision on December 14, 2017, in response to the SIP call issued in the 2015 SSM SIP Action. In its submission, New Jersey is requesting that EPA approve a revised N.J. Admin. Code 7:27–7.2(k), which deletes N.J. Admin. Code 7:27–7.2(k)(2) in its entirety, thereby removing the provision for which EPA issued a SIP call in 2015 from the New Jersey SIP. The December 14, 2017, SIP submittal also includes proposed revisions to other portions of the New Jersey SIP which will be addressed in a separate rulemaking action.

II. Analysis of SIP Submission

EPA is proposing to approve New Jersey's December 14, 2017, SIP submission with respect to N.J. Admin. Code 7:27–7.2(k), which would remove the SIP called provision, N.J. Admin. Code 7:27–7.2(k)(2), from the New Jersey SIP. EPA proposes to find that New Jersey's December 14, 2017, SIP submittal is consistent with CAA requirements and adequately addresses the specific deficiencies that EPA identified in the 2015 SSM SIP Action with respect to the New Jersey SIP.

III. Proposed Action

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). EPA is proposing to approve New Jersey's December 14, 2017 SIP submission requesting that EPA approve into the SIP a revised N.J. Admin. Code 7:27–7.2(k), which removes N.J. Admin. Code 7:27–7.2(k)(2) from the New Jersey SIP. EPA is proposing approval of the SIP revision because we have determined that it is consistent with the requirements for SIP provisions under the CAA. EPA is further proposing to determine that such SIP revision corrects the deficiency identified in the June 12, 2015 SIP call. EPA is not reopening the 2015 SSM SIP Action and is only taking comment on whether this proposed SIP revision is consistent with CAA requirements.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to portions of Title 7, Chapter 27, Subchapter 7 of the New Jersey Administrative Code as discussed in section II of this preamble. EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a).

[2] October 9, 2020, memorandum ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' from Andrew R. Wheeler, Administrator.

[3] September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator.

[4] 80 FR 33840, June 12, 2015.

Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves removal of State law not meeting Federal requirements and does not impose additional requirements beyond those already imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- 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
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The New Jersey SIP does 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. In those areas of Indian country, this rulemaking does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Lisa Garcia,

Regional Administrator, Region 2.

[FR Doc. 2022–07529 Filed 4–21–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 87, No. 78
Friday, April 22, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 19, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 23, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program (SNAP) Mobile Payment Pilots (MPPs).

OMB Control Number: 0584–NEW.

Summary of Collection: Title 7 Section 2016(h)(14) of the U.S. Code, as amended by Section 4006(e) of the Agricultural Act of 2018 (Pub. L. 115–334), requires the Food and Nutrition Service (FNS) to authorize the use of mobile payment technology for accessing Supplemental Nutrition Assistance Program (SNAP) benefits through smart phones, tablets, and other personal mobile devices in place of Electronic Benefit Transfer (EBT) cards.

Need and Use of the Information: FNS plans to issue a Request for Volunteers (RFV) soliciting MPPs proposals from up to 53 SNAP State agencies; and, approve up to five (5) of those State agencies that, in partnership with private, for-profit, EBT stakeholders and authorized SNAP retailers, will implement MPPs that test the use of mobile payment technology by SNAP households to access and redeem program benefits.

FNS must evaluate the data and observations collected and determine whether it is feasible to implement this technology nation-wide, whether further study is required before doing so, or if implementation is not in the best interest of the program, and submit report to report to Congress with the basis of its findings. This information collection is necessary because Congress has specifically mandated that approval and subsequent evaluation of MPPs by State agencies must occur before FNS can fulfill its broader statutory obligations to allow mobile payment technology in SNAP nation-wide.

Description of Respondents: (53) State, Local or Tribal Government (212) Business-for-profit; and (25,000) Individuals/Households.

Number of Respondents: 25,265.

Frequency of Responses: Reporting: Once, Annually, On occasion.

Total Burden Hours: 77,235.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–08644 Filed 4–21–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

USDA Equity Commission

AGENCY: USDA.

ACTION: Notice of public and virtual meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the United States Department of Agriculture (USDA) and the Federal Advisory Committee Act (FACA), that a public meeting of the USDA Equity Commission (EC or Commission) and Subcommittee for Agriculture will convene to continue its work reviewing USDA programs, services, and policies for the purpose of making recommendations for how the Department can improve access and advance equity. The Commission and Subcommittee are authorized under the American Rescue Plan Act of 2021, (the Act) and operates in compliance with the Federal Advisory Committee Act, as amended.

DATES: The EC meeting will be held on Tuesday, May 10 through Wednesday, May 11, 2022 from 10:00 a.m. to 4:30 p.m. each day.

Meeting Access: The public can participate via a zoom meeting link. Access information will be provided to registered individuals via email. Detailed information can be found at: *https://www.usda.gov/equity-commission.*

FOR FURTHER INFORMATION CONTACT: Cecilia Hernandez, Designated Federal Officer, USDA Equity Commission, Office of the Deputy Secretary, 1400 Independence Avenue SW, Room 6006–S, Washington, DC 20250–0235; Phone:(202) 913–5907; Email: *Equitycommission@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the FCC Telecommunications Relay Service (TRS) at 7–1–1 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On January 20, 2021, President Biden signed an Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and committed to creating the USDA Equity Commission as part of his rural agenda and commitment to closing the racial

wealth gap and addressing longstanding inequities in agriculture. Section 1006 of the American Rescue Plan directed USDA to create the Equity Commission and provided funds sufficient to ensure the Commission is well staffed and positioned to deliver on its charge.

The USDA Equity Commission will advise the Secretary of Agriculture and provide USDA with an analysis of how its programs, policies, systems, structures, and practices contribute to barriers to inclusion or access, systemic discrimination, or exacerbate or perpetuate racial, economic, health and social disparities and recommendations for action. The Agriculture Subcommittee reports to the Equity Commission and provides recommendations on issues of concern related to agriculture. Subsequent subcommittees will focus on other policy areas, such as rural community and economic development. The Equity Commission will deliver an interim report and provide actionable recommendations no later than 12 months after inception. A final report will be completed by the Summer of 2023.

Meeting Agenda: The agenda items may include, but are not limited to, welcome and introductions; administrative matters; updates from the Equity Commission, Agriculture Subcommittee and USDA staff; plans for the new Rural Community Economic Development Subcommittee, for developing the EC interim report and next steps. Please check the USDA Equity Commission website (*https://www.usda.gov/equity-commission*) for an agenda 24–48 hours prior to May 10.

Register for the Meeting: The public is asked to pre-register for the meeting by visiting *https://www.usda.gov/equity-commission.* Your pre-registration must state: Your name; organization or interest represented; if you are planning to give oral comments; and if you require special accommodations. USDA will also accept day-of registrations.

Oral Comments: The Commission is providing the public an opportunity to provide oral comments and will accommodate as many individuals and organizations as time permits. Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. ET, May 2, 2022, and may only register for one speaking slot. Participants who wish to make oral comments must also be available to attend a tech-check the day before the meeting. Instructions for registering and participating in the meeting can be found on *https://www.usda.gov/equity-commission.*

Written Comments: Written public comments for consideration at the meeting will be accepted on or before 11:59 p.m. ET, May 2 Comments submitted after this date will be provided to USDA, but the Commission may not have adequate time to consider those comments prior to the meeting. The USDA Equity Commission strongly prefers comments be submitted electronically. However, written comments may also be submitted (*i.e.,* postmarked) via mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline. Written comments will be accepted up to 15 days after the meeting.

Availability of Materials for the Meeting: All written public comments received by May 25, 2022, will be compiled into a file and available for member review and be included in the meeting minutes. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. Please visit *https://www.usda.gov/equity-commission* to view the agenda and/or minutes from this meeting.

Meeting Accommodations: USDA is committed to making its electronic and information technologies accessible to individuals with disabilities by meeting or exceeding the requirements of Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If you need reasonable accommodations, please make requests in advance for reasonable accommodations through the meeting registration link on *https://www.usda.gov/equity-commission.* Determinations for reasonable accommodations will be made on a case-by-case basis.

Dated: April 18, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–08583 Filed 4–21–22; 8:45 am]

BILLING CODE 3410–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of 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 New York Advisory Committee (Committee) will hold web meetings via WebEx at 1:00 p.m. ET on Friday, May 20, 2022, Friday, June 17, 2022, and Friday, July 15, 2022, for the purpose of discussing civil rights topics for their next project.

DATES: The meetings will be held on the following dates/times: Friday, May 20, 2022, at 1:00 p.m. ET, Friday, June 17, 2022, at 1:00 p.m. ET, and July 15, 2022, at 1:00 p.m. ET.

—To join the meeting, please click the following link: *https://tinyurl.com/3efrtr3d*; Password: USCCR

—To join by phone only, dial: 800–360–9505; Access Code: 2762 833 1443

FOR FURTHER INFORMATION CONTACT: Ana Fortes, DFO, at *afortes@usccr.gov* or 202–519–2938.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and 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. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number. To request additional accommodations, please email *afortes@usccr.gov* at least 7 days prior to the meeting for which accommodations are requested.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Ana Fortes at *afortes@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit at 312–353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at *www.facadatase.gov*

under the Commission on Civil Rights, New York Advisory Committee. Persons interested in the work of this Committee are also directed to the Commission's website, *www.usccr.gov;* persons may also contact the Regional Programs Unit office at the above email or phone number.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Discussion: Civil Rights Topics
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: April 18, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–08565 Filed 4–21–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2019; Correction

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

ACTION: Notice; correction.

SUMMARY: The Department of Commerce (Commerce) published a notice in the **Federal Register** of April 8, 2022, in which Commerce announced the final results of the 2019 administrative review of the countervailing duty (CVD) order on certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea). This notice incorrectly listed ''Dongbu USA'' and ''POSCO International Corp. (POSCO International Corporation)'' in ''Appendix II: List of Non-Selected Companies.''

FOR FURTHER INFORMATION CONTACT: Natasia Harrison, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1240.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 8, 2022, in FR Doc 2022–07502, on pages 20823, in the third column, and 20824, in the first column, correct ''Appendix II: List of Non-Selected Companies'' by removing ''13. Dongbu USA'' and ''35. POSCO International Corp. (POSCO International Corporation)'' and renumbering the list as follows:

Appendix II: List of Non-Selected Companies

1. AJU Steel Co., Ltd.
2. Amerisource Korea
3. Atlas Shipping Cp. Ltd.
4. BC Trade
5. Busung Steel Co., Ltd.
6. Cenit Co., Ltd.
7. Daewoo Logistics Corp.
8. Dai Yang Metal Co., Ltd.
9. DK GNS Co., Ltd
10. Dongbu Incheon Steel Co., Ltd.[1]
11. Dongbu Steel Co., Ltd.[2]
12. KG Dongbu Steel Co., Ltd.
13. Dong Jin Machinery
14. Dongkuk Industries Co., Ltd.
15. Dongkuk Steel Mill Co., Ltd.
16. Eunsan Shipping and Air Cargo Co., Ltd.
17. Euro Line Global Co., Ltd.
18. GS Global Corp.
19. Hanawell Co., Ltd.
20. Hankum Co., Ltd.
21. Hyosung TNC Corp.
22. Hyuk San Profile Co., Ltd.
23. Hyundai Group
24. Iljin NTS Co., Ltd.
25. Iljin Steel Corp.
26. Jeen Pung Industrial Co., Ltd.
27. JT Solution
28. Kolon Global Corporation
29. Nauri Logistics Co., Ltd.
30. Okaya (Korea) Co., Ltd.
31. PL Special Steel Co., Ltd.
32. POSCO C&C Co., Ltd.
33. POSCO Daewoo Corp.
34. Samsung C&T Corp.
35. Samsung STS Co., Ltd.
36. SeAH Steel Corp.
37. SM Automotive Ltd.
38. SK Networks Co., Ltd.
39. Taihan Electric Wire Co., Ltd.
40. TGS Pipe Co., Ltd.
41. TI Automotive Ltd.
42. Xeno Energy
43. Young Steel Co., Ltd.

Background

On April 8, 2022, Commerce published in the **Federal Register** the final results of the 2019 administrative review of the CVD order on cold-rolled steel from Korea.[3] This notice inadvertently listed ''Dongbu USA'' and ''POSCO International Corp. (POSCO International Corporation)'' in ''Appendix II: List of Non-Selected Companies.'' Because Dongbu USA is a U.S.-based company, it should not have been included in ''Appendix II: List of Non-Selected Companies.'' [4] Additionally, because POSCO International Corp. (POSCO International Corporation) is a trading company and its entries are subject to the rate of the producer, it should not have been included in ''Appendix II: List of Non-Selected Companies.'' [5]

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.221(b)(5).

Dated: April 18, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–08624 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] While Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd. are non-selected respondents, because each received a calculated rate in the prior review (*i.e., Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2018,* 86 FR 40465 (July 28, 2021)), Commerce has found it appropriate to apply that calculated rate to Dongbu Steel Co., Ltd. and Dongbu Incheon Steel Co., Ltd.

[2] *Id.*

[3] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2019,* 87 FR 20821 (April 8, 2022) (*Final Results*), and accompanying Issues and Decision Memorandum.

[4] *See* AK Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation's Letter, ''Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Request for Administrative Review,'' dated September 30, 2020.

[5] *See Final Results,* 87 FR at 20822 n.8.

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

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

SUMMARY: The Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of March 2022.

DATES: Applicable April 22, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Notice of Scope Ruling Applications: In accordance with 19 CFR

351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of March 2022. This notification includes, for each scope application: (1) Identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.[1] This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at *https://access.trade.gov.*

Scope Ruling Applications

Raw Flexible Magnets from the People's Republic of China (China) (A–570–922; C–570–923); Plastic shelf dividers; produced in and exported from China; [2] submitted by Fasteners for Retail, Inc. dba Siffron (Siffron); March 11, 2022; ACCESS scope segments ''Siffron Plastic Shelf Dividers.''

Wooden Cabinets and Vanities and Components Thereof from China (A–570–106; C–570–107); Chloe Styling Station and Sanden Shampoo Cabinet; [3] produced in and exported from China; submitted by AYC, LLC; March 16, 2022; ACCESS scope segments ''AYC 3/16/22–4/30/22 Stylist Station.''

Certain Aluminum Foil from China (A–570–053, C–570–054); Capacitor foil; [4] produced in and exported from China or Singapore; submitted by GE Grid Solutions, LLC and Instrument Transformers, LLC (collectively, GE Grid); March 30, 2022; ACCESS scope segments ''Capacitor Foil.''

Certain Steel Trailer Wheels 12 to 16.5 Inches from China (A–570–090, C–570–091); Passenger vehicle wheels (Part Nos. X–76801 and 28860W); [5] produced in and exported from China; submitted by Wheel Source, Inc. (Wheel Source); March 31, 2022; ACCESS scope segments ''Wheel Source III.''

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.[6] Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.[7] Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the ''updated'' 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the ''updated'' 30th day.[8]

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[1] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) (''It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) Identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.'')

[2] Siffron's products are plastic shelf dividers, generally T or L-shaped, that include a flexible magnetic on their plastic base. The plastic shelf dividers, which are manufactured to fit standard size shelves, can also be custom made and sized to meet the organization and display needs of a particular retailer. The shelf dividers may be clear in color, opaque, or in a color that matches the retailer's shelves. Reusable, plastic shelf dividers may be moved to meet organization and display needs. Plastic shelf dividers are manufactured with rigid plastic, that ensures that product on a shelf remains organized and does not comingle. The plastic shelf dividers also allow retailers to design product displays to ensure their merchandise is displayed in a manner that allows consumers to view merchandise in an attractive and easy to view manner. The plastic shelf dividers covered by this request are classified under HTSUS heading 8505 and, according to CBP, HTSUS subheading 8505.19.2000. Plastic shelf dividers are manufactured and exported from China. The country of origin is China.

[3] The Chloe Styling Station is a free-standing storage space and work surface made of wooden construction with metal or plastic fittings for use by hair professionals. The Sanden Shampoo Cabinet is a free-standing shampoo cabinet made of wooden construction with metal or plastic fittings for use by hair professionals. The tariff classification of the Chloe Styling Station and Sanden Shampoo Cabinet is 9403.60.8081, which covers other furniture and parts thereof. The Chloe Styling Station and Sanden Shampoo Cabinet are produced in and exported from China.

[4] There are two types of aluminum capacitor foil at issue: (1) Pre-slit, annealed foil, and (2) master logs of unannealed foil. Both types are made with aluminum alloys with aluminum content above 99%, 5 microns (0.005 mm or 0.00019 inch) thick, and imported in reels greater than 25 pounds. Neither type is backed or cut-to-shape. Both types of aluminum capacitor foil at issue are used in high-voltage capacitors that are manufactured by Instrument Transformers in the United States and sold to GE Grid. Instrument Transformers uses the aluminum capacitor foil only for its conductivity properties, and not for its barrier, thermal, reflective, or insulation properties. The conductivity properties of the aluminum capacitor foil functions in the capacitors by conducting electricity. The aluminum capacitor foil at issue will be produced in China, exported from China or Singapore, and China will be the declared country of origin for U.S. imports of the aluminum capacitor foil. The product's tariff classification under the HTSUS is 7607.11.3000. There is no domestic U.S. production of aluminum capacitor foil.

[5] The products subject to Wheel Source's request are steel wheels for automotive use only exported from the People's Republic of China which is also the declared country of origin. The product's tariff classification under the HTSUS is 8708.70.4560. Wheel Source imports steel passenger vehicle wheels not for use with trailers. Part no. X–76801 has an outside diameter (rim size) of 16 x 6.5 inches, with a center bore also known as a pilot diameter of 116.81mm and a load rating capacity of 3,500 pounds. Part no. X–76801 also has a positive offset of 28mm and an 8–6.5 bolt pattern. Part no. 28860W has an outside diameter (rim size) of 16 x 6 inches, with a center bore also known as a pilot diameter of 6.47 inches and a load rating capacity of 2,750. Part no. 28860W also has a negative offset of 5 inches and a 6–8.75 bolt pattern. Thus, Wheel Source's wheels fall within the rim size dimensions of the scope language. However, as described below, Wheel Source's wheels are distinguishable based on other physical characteristics that demonstrate they are not suitable for use on road and highway trailers or other towable equipment.

Wheel Source imports both hub-centric and multi-fit wheels. Hub-centric wheels are designed to a tighter tolerance fit for specific vehicles. Multi-fit wheels are designed so that a single product will fit multiple applications, *i.e.* multiple makes, models or years of the vehicle. A hub-centric wheel makes direct contact the mounting flange built into a vehicle's wheel hub. Multi-fit rims do not make contact with the hub. Part no. X–76801 is a multi-fit wheels and part no. 28860W is a hub centric wheel.

Further, multi-fit wheels are limited in use to certain vehicles and are not interchangeable with trailer wheels. Specifically, the wheels subject to this request are not only labeled ''not for trailer use,'' but are physically stamped ''automotive use only.'' Further, Wheel Source does not warrant the wheels subject to this request for any use other than with passenger vehicles.

[6] In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

[7] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[8] This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at *https://access.trade.gov/help/Scope_Ruling_Guidance.pdf.* Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce's procedures.[9]

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: April 19, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–08625 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Rescission of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: Based upon the timely withdrawal of all review requests, the Department of Commerce (Commerce) is rescinding the administrative reviews covering the periods of review and the antidumping duty (AD) and countervailing duty (CVD) orders identified in the table below.

DATES: Applicable April 22, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Based upon timely requests for review, Commerce initiated administrative reviews of certain companies for the periods of review and the AD and CVD orders listed in the table below, pursuant to 19 CFR 351.221(c)(1)(i).[1] All requests for these reviews have been timely withdrawn.[2]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested the review withdraw their review requests within 90 days of the date of publication of the notice of initiation for the requested review. All parties withdrew their requests for the reviews listed in the table below within the 90-day deadline. No other parties requested administrative reviews of these AD/CVD orders for the periods noted in the table. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding, in their entirety, the administrative reviews listed in the table below.

	Period of review
AD Proceedings	
India: Forged Steel Fittings, A–533–891	5/28/2020–11/30/2021
Mexico:	
Carbon and Certain Alloy Steel Wire Rod, A–201–830	10/1/2020–9/30/2021
Heavy Walled Rectangular Welded Carbon Steel Pipes And Tubes, A–201–847	9/1/2020–8/31/2021
Seamless Refined Copper Pipe and Tube, A–201–838	11/1/2020–10/31/2021
Netherlands: Certain Hot-Rolled Steel Flat Products, A–421–813	10/1/2020–9/30/2021
Republic of Korea: Oil Country Tubular Goods, A–580–870	9/1/2020–8/31/2021
Taiwan: Narrow Woven Ribbons With Woven Selvedge, A–583–844	9/1/2020–8/31/2021
The People's Republic of China:	
Diamond Sawblades and Parts Thereof, A–570–900	11/1/2020–10/31/2021
Fresh Garlic, A–570–831	11/1/2020–10/31/2021
Narrow Woven Ribbons With Woven Selvedge, A–570–952	9/1/2020–8/31/2021

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021).

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 6487 (February 4, 2022); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 61121 (November 5, 2021); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 67685 (November 29, 2021); *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 73734 (December 28, 2021).

[2] The letters withdrawing the review requests may be found in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

	Period of review
Polyethylene Terephthalate Film, Sheet, and Strip, A–570–924	11/1/2020–10/31/2021
Polyvinyl Alcohol, A–570–879	10/1/2020–9/30/2021
Refillable Stainless Steel Kegs, A–570–093	12/1/2020–11/30/2021

CVD Proceedings

None.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping and/or countervailing duties on all appropriate entries during the periods of review noted above for each of the listed administrative reviews at rates equal to the cash deposit of estimated antidumping or countervailing duties, as applicable, required at the time of entry, or withdrawal of merchandise from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this recission notice in the **Federal Register** for rescinded administrative reviews of AD/CVD orders on countries other than Canada and Mexico. For rescinded administrative reviews of AD/CVD orders on Canada or Mexico, Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of this recission notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of merchandise subject to AD orders of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in these segments of these proceedings. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 19, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–08623 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Final Management Plan for the Delaware National Estuarine Research Reserve

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval for the revised management plan for the Delaware National Estuarine Research Reserve.

SUMMARY: Notice is hereby given that the Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce approves the revised management plan for the Delaware National Estuarine Research Reserve. In accordance with applicable Federal regulations, the Delaware Department of Natural Resources and Environmental Control revised the reserve's management plan, which replaces the plan previously approved in 2013.

ADDRESSES: The approved management plan can be downloaded or viewed at *https://documents.dnrec.delaware.gov/coastal/DNERR/2022-DNERR-Management-Plan.pdf.* The document is also available by sending a written request to the point of contact identified below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jean R. Brodeur, *jean.brodeur@noaa.gov,* 854–900–2575.

SUPPLEMENTARY INFORMATION: Pursuant to 15 CFR 921.33(c), a state must revise the management plan for its research reserve at least every five years. Changes to a reserve's management plan may be made only after receiving written approval from the National Oceanic and Atmospheric Administration (NOAA). NOAA approves changes to management plans via notice in the **Federal Register**. On December 16, 2021, NOAA issued a notice in the **Federal Register** announcing a thirty-day public comment period for the proposed revision of the Delaware National Estuarine Research Reserve management plan (86 FR 71421). No comments were received.

The management plan outlines the reserve's strategic goals and objectives; administrative structure; programs for conducting research and monitoring, education, and training; resource protection, restoration, and manipulation plans; public access and visitor use plans; consideration for future land acquisition; and facility development to support reserve operations. Since 2013, this research reserve has had an important impact on the local area and its communities. The reserve's training program held 53 trainings, workshops or conferences with 27,851 contact hours with local constituents. The education program had 32,466 contact hours with 11,722 K–12 students and 23,599 public participants. Reserve volunteers donated 20,739 hours of time producing the full-time employee equivalent of 10.5 years of work. Some of those volunteer hours were spent recording 1,784,923 spawning horseshoe crabs on the three beaches that the reserve monitors. Research and monitoring efforts produced 15 peer-reviewed publications that used this reserve's infrastructure and data. The mini-grant opportunity, available through their research and monitoring program, distributed $183,766 of funding to local, Delaware-based researchers, many of which were early career faculty. Seventy-six acres of land within this reserve's boundary have been enhanced

through reforestation and other restoration efforts.

With the approval of this revised management plan, the boundary will be amended to incorporate an additional six parcels—all found within the priority acquisition area identified in the 2013 revision of the plan—increasing the total acreage to 6,364 acres. These parcels include lands that enhance and contribute to the ecological protection within the Blackbird Creek watershed. The ''McKinley'' property at 531 Union Church Road is 67.4 acres in size and includes a mix of native hardwoods and coastal plain ponds (Delmarva Bays). At 0 Taylors Bridge Road, the 32-acre ''Unruh'' property includes a wooded tributary buffer and agricultural lands. Three parcels known as the ''Norris'' property, totaling 42.6 acres at Union Church Road, were acquired to improve wildlife corridor habitat and include forest and agriculture lands. Additionally, an inholding property known as ''Manwaring'' at 789 Blackbird Landing Road, 16.3 acres in size, was acquired. More details on these parcels and the boundary change may be found in the revised management plan.

In addition to continuing the tradition of robust local community education, training and research and stewardship programs, the Delaware National Estuarine Research Reserve intends, in this next management planning period, to focus on creating demonstration areas that can be used to model best management practices for local landowners; fostering the next generation of coastal professionals and conservation stewards; engaging land managers in conversations based on watershed scale conservation; and connecting with the Delaware community in a meaningful and inclusive manner to identify their needs as the stakeholders of this research reserve. The revised management plan will serve as the guiding document for this 6,364-acre research reserve for the next five years.

NOAA reviewed the environmental impacts of the revised management plan and determined that this action is categorically-excluded from further analysis under the National Environmental Policy Act, consistent with NOAA Administrative Order 216–6.

Authority: 16 U.S.C. 1451 *et seq.;* 15 CFR 921.33.

Keelin S. Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–08590 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB974]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of web conference.

SUMMARY: The Center of Independent Experts (CIE) review of the Bering Sea and Aleutian Islands (BSAI Pacific ocean perch stock assessment will be held May 9, 2022 through May 13, 2022.

DATES: The meeting will be held on Monday, May 9, 2022 through Friday, May 13, 2022, from 10 a.m. to 5 p.m., Pacific Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://apps-afsc.fisheries.noaa.gov/Plan_Team/2022_pop_cie/.*

Council address: Alaska Fishery Science Center, 7600 Sand Point Way, Seattle, WA 98115; telephone: (206) 526–4000.

FOR FURTHER INFORMATION CONTACT: Paul Spencer, Alaska Fishery Science Center staff; phone: (206) 526–4000; email: *paul.spencer@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Monday, May 9, 2022, through Friday, May 13, 2022

The CIE will review the Bering Sea Aleutian Islands Pacific Ocean perch stock assessment input data and model. The agenda is subject to change, and the latest version will be posted at *https://apps-afsc.fisheries.noaa.gov/Plan_Team/2022_pop_cie/* prior to the meeting, along with meeting materials.

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

Dated: April 19, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08608 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB655]

NOAA Fisheries Draft Climate Science Regional Action Plans (2022–2024)

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

ACTION: Notice of availability of the NOAA Fisheries Draft Climate Science Regional Action Plans (2022–2024); request for comments.

SUMMARY: We, NMFS, announce the availability of Draft Climate Science Regional Action Plans designed to increase the production, delivery and use of climate-related information to fulfill our stewardship mission for the Nation's valuable living marine resources. We are soliciting review and comment from the public and all interested parties, and will consider all substantive comments received during the review period before publishing final Plans. Comments are invited on: (a) The clarity of the goals and activities in the draft Plans, (b) how to strengthen the draft Plans and activities; (c) what additional goals and activities need to be addressed. Comments submitted in response to this notice will be provided to the Regional Action Plan Teams for consideration in development of the final Plans.

DATES: Comments on the Draft Climate Science Regional Action Plans must be received by June 2, 2022.

ADDRESSES: To review the draft regional plans, visit: *https://www.fisheries.noaa.gov/national/climate/climate-science-strategy-regional-action-plans.*

Comments may be submitted on the NOAA Fisheries Draft Climate Science Regional Action Plans, identified by NOAA–NMFS–2022–0007 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0007 in the Search box. Click the ''Comment'' icon and complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Roger Griffis, NMFS/Office of Science and Technology, 1315 East-West Highway, Silver Spring, MD 20910. Include on the envelope the following identifier ''Draft Climate Science Regional Action Plans Comments.''

Instructions: Comments sent by any other method, to any other address or

individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The NOAA Fisheries Draft Climate Science Regional Action Plans are available online at *https://www.fisheries.noaa.gov/national/climate/climate-science-strategy-regional-action-plans* or upon request from the NMFS Office of Science and Technology.

FOR FURTHER INFORMATION CONTACT: Roger Griffis, (301)–980–4694, *NMFS.RAPcomments@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Changing climate and ocean conditions are affecting the Nation's valuable living marine resources and the many people, businesses and communities that depend on them. From warming oceans and rising sea levels, to ocean acidification and changes in the distribution and abundance of marine resources, these impacts are expected to increase with continued changes in the planet's climate and ocean systems. There is much at risk—for example fishing and seafood industries support over $240 billion dollars in economic activity and 1.7 million jobs every year. There is growing demand from decision-makers for better information on what's changing, what's vulnerable and how to respond. NMFS is working to provide decision-makers with the information they need to reduce impacts and increase resilience of marine resources and the people that depend on them in a changing climate.

The NOAA Fisheries Climate Science Strategy, released in August of 2015 and available at *https://www.fisheries.noaa.gov/topic/climate-change,* responded to the growing demand from fisheries and other decision makers for better information about what's changing, what's at risk and how to respond to changing climate and ocean conditions. The Climate Science Strategy identified seven key objectives to produce and deliver the climate-related information to meet decision-maker needs and fulfill NMFS mandates in a changing climate. It also provided a national framework designed to be customized and implemented in each region through Climate Science Regional Action Plans.

In 2016 NMFS created the first Climate Science Regional Action Plans (available at: *https://www.fisheries.noaa.gov/national/climate/climate-science-strategy-regional-action-plans*) in collaboration with Fishery Management Councils and other partners to identify the strengths, weaknesses, priorities, and specific actions to implement the Climate Science Strategy in the Northeast, Southeast, Pacific Islands, West Coast and Alaska Regions. While some impacts of changing climate and oceans on living marine resources are shared across regions, each region has a unique combination of climate-related challenges, capabilities, and information requirements needed to implement the Strategy.

The Climate Science Regional Action Plans are cross-agency, coordinated efforts to increase implementation of the Climate Science Strategy in each region. The Climate Science Regional Action Plans include goals and actions to help track changing marine ecosystem conditions, assess risks, provide early warnings and longer-term projections, and evaluate management strategies under changing conditions.

Development of the Draft Climate Science Regional Action Plans for 2022–2024

In 2021 NMFS conducted an assessment of progress to implement the Climate Science Strategy during 2016–2020 including efforts under the first Climate Science Regional Action Plans. This five year Progress Report (*https://spo.nmfs.noaa.gov/content/tech-memo/noaa-fisheries-climate-science-strategy-five-year-progress-report*) provided information that was used in development of the draft Climate Science Regional Action Plans for 2022–2024. NOAA also considered other information in development of the draft Climate Science Regional Action Plans including public input on how to increase the resilience of fisheries and protected resources to climate change pursuant to Executive Order 14008 Section 216c. The draft Climate Science Regional Action Plans were developed by regional teams consisting of NMFS personnel from Science Centers and Regional Offices. The draft Climate Science Regional Action Plans build upon previous efforts and identify proposed actions over the next 3 years to address key climate-science needs in each region.

The goal of the draft Climate Science Regional Action Plans is to continue to increase the production, delivery and use of climate-related information needed for fisheries management and protected species conservation in each region. Each draft Climate Science Regional Action Plan identifies specific actions to implement the seven objectives of the NOAA Fisheries Climate Science Strategy. The actions address key needs in each region based on input from NMFS scientists, resource managers, stakeholders and other sources. The draft Climate Science Regional Action Plans include actions to provide decision makers with better information on what's changing, what's at risk and how different management strategies may perform under changing climate and ocean conditions.

For example, the draft Climate Science Regional Action Plans include specific actions and products such as:

- Tracking Change: Monitor and assess key indicators of ecosystem conditions to better track and provide early warnings of changing conditions.
- Forecasting conditions: Research and modeling to understand the mechanisms of change and provide near and longer term forecasts of conditions.
- Assessing Risks: Assess the vulnerability of marine resources, fisheries, fishing communities and other sectors that depend on marine resources.
- Evaluating best strategies: Identify alternative management approaches and evaluate how they may perform under changing conditions to identify best approaches for stewardship of the Nation's valuable marine resources.

Public Comments Solicited

NMFS is committed to increasing the production, delivery, and use of climate-related information to fulfill its living marine resource stewardship mandates. NMFS works with and depends on many partners to fulfill its science and information needs, including other government agencies, academia, fisheries, and other organizations. As such, NMFS is providing this opportunity for broad public review and comment on the draft Climate Science Regional Action Plans from the Northeast, Southeast, Pacific Islands, West Coast and Alaska Regions. These draft Climate Science Regional Action Plans will guide efforts to provide decision-makers with timely, actionable information to help reduce impacts and increase resilience of living marine resources and the many people, businesses and communities that depend on them.

Public comments are invited to help clarify and strengthen the draft Climate Science Regional Action Plans. Comments are invited on: (a) The clarity of the goals and activities in the draft Plans, (b) how to strengthen the draft Plans and activities; (c) what additional goals or activities need to be addressed. Comments submitted in response to this notice will be provided to the Regional Action Plan Teams for consideration in development of the final Plans.

Authority: 16 U.S.C. 1881c, Fisheries Research Section 404 (a) and Executive Order 14008, Section 216 (c).

Dated: April 14, 2022.

Evan Howell,

Director, Office of Science and Technology, National Marine Fisheries Service (NMFS).

[FR Doc. 2022–08483 Filed 4–21–22; 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; Annual Economic Survey of Federal Gulf and South Atlantic Shrimp Permit Holders

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 December 17, 2021 (86 FR 71622) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration, Commerce

Title: Annual Economic Survey of Federal Gulf and South Atlantic Shrimp Permit Holders.

OMB Control Number: 0648–0591.

Form Number(s): None.

Type of Request: Regular submission: Extension of a current information collection.

Number of Respondents: 650.

Average Hours per Response: 45 minutes.

Total Annual Burden Hours: 488.

Needs and Uses: NOAA Fisheries, Southeast Fisheries Science Center, annually collects socioeconomic data from commercial fishermen in the Gulf of Mexico and South Atlantic shrimp fisheries who hold one or more permits for harvesting shrimp from federal waters (U.S. Exclusive Economic Zone). A collection of economic information from fishers affected by the management of federal commercial fisheries is needed to ensure that national goals, objectives, and requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MFCMA) and other laws are met. The data is needed to conduct socioeconomic analyses in support of management of the shrimp fishery and to satisfy legal requirements. Information about revenues, variable and fixed costs, capital investment and other socioeconomic information is collected from a random sample of permit holders. The data will be used to assess how fishermen will be impacted by and respond to federal regulation likely to be considered by fishery managers. No changes are requested with this renewal request.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: Magnuson Stevens Fishery Conservation and Management Act.

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 0648–0591.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–08660 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB973]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a two-day in-person meeting of its Standing, Reef Fish, Socioeconomic, and Shrimp Scientific and Statistical Committees (SSC).

DATES: The meeting will take place Tuesday, May 10 and Wednesday, May 11, 2022, from 9 a.m. to 5 p.m., EDT daily.

ADDRESSES: If you are unable to attend in-person, the public may listen-in to the meeting via webinar. Registration information will be available on the Council's website by visiting *www.gulfcouncil.org* and clicking on the ''meeting tab''.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Rindone, Lead Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Tuesday, May 10, 2022; 9 a.m.–5 p.m., EDT

The meeting will begin with Introductions and Adoption of Agenda, Approval of Verbatim Minutes and Meeting Summary from the March 8–10, 2022, meeting, and review of Scope of Work. The Committees will select an SSC Representative for the June 21–24, 2022, Gulf Council Meeting. Following, Committees will receive a presentation on National Standard 2 and the Best Scientific Information Available. The Committees will then hold a discussion on the Council's Acceptable Biological Catch Control Rule modifications, including a presentation on the Southeast Fishery Science Center (SEFSC) proposal, and review background materials for discussion. Public comment will be heard at the end of the day.

Wednesday, May 11, 2022; 9 a.m.–5 p.m., EDT

The Committees will receive a presentation of an update on the Number of Active Gulf Shrimp Permits, Economic Estimates, and Royal Red Shrimp Landings. The Committees will review the SEFSC Analysis of Red Grouper Stock Assessments using Alternative Marine Recreational Information Program Landings Data, followed by a review of Additional Sector Allocation-informed Projections for Gulf of Mexico Greater Amberjack. The Committees will then hold a discussion of the Council's April 2022 motion about Goliath Grouper and review available data and background material for SSC discussion.

The Committees will review the Terms of Reference for the State Reef Fish Survey Run of the Southeast Data, Assessment, and Review (SEDAR) 72 base model for Gulf Gag Grouper. Lastly, the Committees will receive public comment before addressing any items under Other Business.

—Meeting Adjourns

The meeting will also be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the SSC meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committee will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take-action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Pereira, (813) 348–1630, at least 5 days prior to the meeting date.

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

Dated: April 19, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08609 Filed 4–21–22; 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; Surfclam/Ocean Quahog Individual Transferable Quota Administration

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 20, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Surfclam/Ocean Quahog Individual Transferable Quota Administration.

OMB Control Number: 0648–0240.

Form Number(s): None.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 180.

Average Hours Per Response: ITQ permit application form, review of a pre-filled form for renewing entities, ITQ transfer form, 5 minutes each; 1 hour to complete the ITQ ownership form for new applicants and 30 minutes for the application to shuck surfclams and ocean quahogs at sea. The requirements under the PSP protocol are based on the number of vessels that land surfclams or ocean quahogs and the number of trips taken into the area, with a total estimated annual burden of 2,400 hours.

Total Annual Burden Hours: 1,642.

Needs and Uses: This request is for an extension of a currently approved collection associated with the Atlantic surfclam and ocean quahog fisheries. National Marine Fisheries Service (NMFS) Greater Atlantic Region manages these fisheries in the Exclusive Economic Zone (EEZ) of the Northeastern United States through the Atlantic Surfclam and Ocean Quahog 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.

The recordkeeping and reporting requirements at §§ 648.74, 648.75, and 648.76 form the basis for this collection of information. We request information from surfclam and ocean quahog individual transferable quota (ITQ) permit holders to issue ITQ permits and to process and track requests from permit holders to transfer quota share or cage tags. We also request information from surfclam and ocean quahog ITQ permit holders to track and properly account for surfclam and ocean quahog harvest shucked at sea. Because there is not a standard conversion factor for estimating unshucked product from shucked product, NMFS requires vessels that shuck product at sea to carry on board the vessel a NMFS-approved observer to certify the amount of these clams harvested. This information, upon receipt, results in an efficient and accurate database for management and monitoring of fisheries of the Northeastern U.S. EEZ.

Georges Bank has been closed to the harvest of surfclams and ocean quahogs since 1990 due to red tide blooms that cause paralytic shellfish poisoning (PSP). We reopened a portion of the Georges Bank Closed Area starting in 2012 under certain conditions. We request information from surfclam and ocean quahog ITQ permit holders who fish in the reopened area to ensure compliance with the Protocol for Onboard Screening and Dockside Testing in Molluscan Shellfish. The U.S. Food and Drug Administration, the commercial fishing industry, and NMFS developed the PSP protocol to test and verify that clams harvested from Georges Bank continue to be safe for human consumption. The National Shellfish Sanitation Program adopted the PSP protocol at the October 2011 Interstate Shellfish Sanitation Conference.

The Council has approved Amendment 20 to the Surfclam and Ocean Quahog FMP, which would implement an excessive shares cap in this fishery. If that action is approved

and implemented, some of the fields in the ITQ ownership form and the ITQ transfer form may change as a result. Any revisions to this collection will be specified in the proposed rule for the amendment.

Affected Public: Individuals and Business or other for-profit organizations.

Frequency: Frequency varies from collection to collection (*e.g.,* annual, per trip, as requested by public).

Respondent's Obligation: Obligation varies from collection to collection (*e.g.,* mandatory, voluntary, required to retain benefits).

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq,* Section 303).

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 0648–0240.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB775]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Off New Jersey and New York for Atlantic Shores Offshore Wind, LLC

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an IHA to Atlantic Shores Offshore Wind, LLC to incidentally harass marine mammals during marine site characterization surveys off New Jersey and New York.

DATES: This Authorization is effective from April 20, 2022 through April 19, 2023.

FOR FURTHER INFORMATION CONTACT: Kelsey Potlock, 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/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* 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 issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be 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.

Summary of Request

On August 16, 2021, NMFS received a request from Atlantic Shores for an IHA to take marine mammals incidental to marine site characterization surveys occurring in three locations (Lease Area and Export Cable Routes (ECR) North and South) off of New Jersey and New York in and around the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Area (OCS)–A 0499. The application was deemed adequate and complete on December 13, 2021. Atlantic Shores' request is for take of a small number of 15 species of marine mammals (comprised of 16 stocks) by Level B harassment only. Neither Atlantic Shores nor NMFS expects serious injury or mortality to result from this activity; therefore, an IHA is appropriate.

Description of Activities

Overview

As part of its overall marine site characterization survey operations, Atlantic Shores will conduct high-resolution geophysical (HRG) surveys in and around the Lease Area (OCS)–A 0499 and along potential submarine cable routes (ECRs North and South) to a landfall location in either New York or New Jersey.

The purpose of these surveys are to support the site characterization, siting, and engineering design of offshore wind facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Area and along export cable routes (ECRs). As many as three survey vessels may operate concurrently. 360 days of survey days are planned with vessels operating for 24-hours as part of the planned surveys (Table 1). Underwater sound resulting from Atlantic Shores' planned site characterization survey activities, specifically certain acoustic sources operating at <180 kilohertz (kHz), has the potential to result in incidental take of marine mammals in the form of behavioral harassment (Table 2).

TABLE 1—NUMBER OF SURVEY DAYS THAT ATLANTIC SHORES PLANS TO PERFORM THE DESCRIBED HRG SURVEY ACTIVITIES

Survey area	Number of active survey days expected [1]
Lease Area	120
ECR North	180
ECR South	60
Total	360

[1] Surveys in each area may temporally overlap; therefore, actual number of days of activity in a given year would be less than 360.

TABLE 2—SUMMARY OF REPRESENTATIVE EQUIPMENT SPECIFICATIONS WITH OPERATING FREQUENCIES BELOW 180 kHz

HRG survey equipment (sub-bottom profiler)	Representative equipment type	Operating frequency ranges (kHz)	Operational source level ranges (dB_{RMS}) [b]	Beamwidth ranges (degrees)	Typical pulse durations RMS (millisecond)	Pulse repetition rate (Hz)
Sparker (impulsive)	Applied Acoustics Dura-Spark 240 [a]	0.01 to 1.9	203	180	3.4	2
	Geo Marine Geo-Source	0.2 to 5	195	180	7.2	0.41
CHIRPs (non-impulsive)	Edgetech 2000–DSS	2 to 16	195	24	6.3	10
	Edgetech 216	2 to 16	179	17, 20, or 24	10	10
	Edgetech 424	4 to 24	180	71	4	2
	Edgetech 512i	0.7 to 12	179	80	9	8
	Pangeosubsea Sub-Bottom Imager™	4 to 12.5	190	120	4.5	44

Note—Two sources with potential for use by Atlantic Shores (*i.e.,* the INNOMAR SES–2000 Medium-100 Parametric and the INNOMAR deep-36 Parametric) are not expected to result in take due to their higher frequencies and extremely narrow beamwidths. Because of this, these sources were not considered when calculating the Level B harassment isopleths and are not discussed further in this notice. Acoustic parameters on these parametric sub-bottom profilers can be found in Atlantic Shores' IHA application on NMFS' website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable*).

[a] Atlantic Shores discussed with NMFS and include information in their application that while the Applied Acoustics Dura-Spark 240 is planned to be used during survey activities, the equipment specifications and subsequent analysis are based on the SIG ELC 820 with a power level of 750 joules (J) at a 5 meter depth (Crocker and Fratantonio (2016)). However, Atlantic Shores expects a more reasonable power level to be 500–600 J based on prior experience with HRG surveys; 750 J was used as a worst-case scenario to conservatively account for take of marine mammals as these higher electrical outputs would only be used in areas with denser substrates (700–800 J).

[b] Root mean square (RMS) = 1 microPa.

Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

A detailed description of the planned surveys by Atlantic Shores are provided in the **Federal Register** notice of the proposed IHA (87 FR 4200; January 27, 2022). Since that time, no changes have been made to the survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activities.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Atlantic Shores was published in the **Federal Register** on January 27, 2022 (87 FR 4200). That proposed notice described, in detail, Atlantic Shores' activities, the marine mammal species that may be affected by the activities, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. This proposed notice was available for a 30-day public comment period.

NMFS received 11 individual comments from private citizens. Eight of these expressed general opposition to or support for the IHA and the underlying associated activities and two specifically addressed concerns regarding construction of a wind energy facility itself, which is outside the scope of NMFS' action considered herein. We do not specifically address these comments, or non-substantive comments expressing general opposition or support from private citizens, in further detail. Additionally, NMFS received two letters from environmental non-governmental organizations (eNGOs) (Oceana, Inc. and Clean Ocean Action (COA)) and one letter from a local citizen group (Save Long Beach Island (LBI)). All substantive comments, and NMFS' responses, are provided below, and the letters are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-0*). Please review the corresponding public comment link for full details regarding the comments, letters, and underlying justification.

Comment 1: Oceana made comments objecting to NMFS' renewal process regarding the extension of any one-year IHA with a truncated 15-day public comment period, and suggested an additional 30-day public comment period is necessary for any renewal request.

NMFS' response: NMFS' IHA renewal process meets all statutory requirements. In prior responses to comments about IHA renewals (*e.g.,* 84 FR 52464; October 2, 2019 and 85 FR 53342, August 28, 2020), NMFS has explained how the renewal process, as implemented, is consistent with the statutory requirements contained in section 101(a)(5)(D) of the MMPA, and, further, promotes NMFS' goals of improving conservation of marine mammals and increasing efficiency in the MMPA compliance process. Therefore, we intend to continue implementing the renewal process.

The Notice of the proposed IHA published in the **Federal Register** on January 27, 2022 (87 FR 4200) made clear that the agency was seeking comment on the proposed IHA and the potential issuance of a renewal for this survey. Because any renewal is limited to another year of identical or nearly identical activities in the same location or the same activities that were not completed within the 1-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year renewal, should the IHA holder choose to request one in the coming months.

While there would be additional documents submitted with a renewal request, for a qualifying renewal these would be limited to documentation that NMFS would make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS would also need to confirm, among other things, that the activities would occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request would also contain a preliminary monitoring report, in order to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. Between the initial 30-day comment period on these same activities and the

additional 15 days, the total comment period for a renewal is 45 days.

In addition to the IHA renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for renewals in the regulations, description of the process and express invitation to comment on specific potential renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has ensured that the public is ''invited and encouraged to participate fully in the agency's decision-making process'', as Congress intended.

Comment 2: Oceana and COA remarked that NMFS must utilize the best available science. The commenters further suggest that NMFS has not done so, specifically, referencing information regarding the NARW such as updated population estimates and recent habitat usage patterns in Atlantic Shores' survey area. The commenters specifically asserted that NMFS is not using the best available science with regards to the North Atlantic right whale (NARW) population estimate and state that NMFS should be using the 336 estimate presented in the recent North Atlantic Right Whale Report Card (*https://www.narwc.org/report-cards.html*).

NMFS' response: While NMFS agrees that the best available science should be used for assessing NARW abundance estimates, we disagree that the North Atlantic Right Whale Report Card (*i.e.,* Pettis *et al.* (2022)) study represents the most recent and best available estimate for NARW abundance. Rather the revised abundance estimate (368; 95 percent with a confidence interval of 356–378) published by Pace (2021) (and subsequently included in the 2021 draft Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*)), which was used in the proposed IHA, provides the most recent and best available estimate, and introduced improvements to NMFS' right whale abundance model. Specifically, Pace (2021) looked at a different way of characterizing annual estimates of age-specific survival. NMFS considered all relevant information regarding NARW, including the information cited by the commenters. However, NMFS relies on the SAR. Recently (after publication of the notice of proposed IHA), NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). We anticipate that this information will be presented in the draft 2022 SAR. We note that this change in abundance estimate would not change the estimated take of NARWs or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Atlantic Shores' survey activities.

NMFS further notes that the commenters seem to be conflating the phrase ''best available data'' with ''the most recent data.'' The MMPA specifies that the ''best available data'' must be used, which does not always mean the most recent. As is NMFS' prerogative, we referenced the best available NARW abundance estimate of 368 from the draft 2021 SARs as NMFS's determination of the best available data that we relied on in our analysis. The Pace (2021) results strengthened the case for a change in mean survival rates after 2010–2011, but did not significantly change other current estimates (population size, number of new animals, adult female survival) derived from the model. Furthermore, NMFS notes that the SARs are peer reviewed by other scientific review groups prior to being finalized and published and that the North Atlantic Right Whale Report Card (Pettis *et al.,* 2022) does not undertake this process.

The commenters also noted their concern regarding NARW habitat usage, stating that NMFS was not appropriately considering relevant information on this topic. While this survey specifically intersects migratory habitat for NARWs, year-round ''core'' NARW foraging habitat (Oleson *et al.,* 2020) located much further north in the southern area of Martha's Vineyard and Nantucket Islands where both visual and acoustic detections of NARWs indicate a nearly year-round presence (Oleson *et al.,* 2020). NMFS notes that prey for NARWs are mobile and broadly distributed throughout the survey area; therefore, NARW foraging efforts are not likely to be disturbed given the location of these planned activities in relation to the broader area that NARWs migrate through and the northern areas where NARWs primarily forage. There is ample foraging habitat further north of this survey area that will not be ensonified by the acoustic sources used by Atlantic Shores, such as in the Great South Channel and Georges Bank Shelf Break feeding biologically important area (BIA). Furthermore, and as discussed in the proposed Notice, the spatial acoustic footprint of the survey is very small relative to the spatial extent of the available foraging habitat.

Lastly, as we stated in the proposed Notice, any impacts to marine mammals are expected to be temporary and minor and, given the relative size of the survey area compared to the overall migratory route leading to foraging habitat (which is not affected by the specified activity). Comparatively, the survey area is approximately 5,868 square kilometers (km^2) and the NARW migratory BIA is 269,448 km^2. Because of this, and in context of the minor, low-level nature of the impacts expected to result from the planned survey, such impacts are not expected to result in disruption to biologically important behaviors.

Comment 3: Oceana noted that chronic stressors are an emerging concern for NARW conservation and recovery, and stated that chronic stress may result in energetic effects for NARWs. Oceana suggested that NMFS has not fully considered both the use of the area and the effects of both acute and chronic stressors on the health and fitness of NARWs, as disturbance responses in NARWs could lead to chronic stress or habitat displacement, leading to an overall decline in their health and fitness.

NMFS' response: NMFS agrees with Oceana that both acute and chronic stressors are of concern for NARW conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness, reproductive, etc. impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals, and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Atlantic Shores would create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has also prescribed a robust suite of mitigation measures, including extended distance shutdowns for NARW, that are expected to further reduce the duration and intensity of acoustic exposure, while limiting the potential severity of any possible

behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS's negligible impact analyses. Because NARWs generally use this location in a transitory manner, specifically for migration, any potential impacts from these surveys are lessened for other behaviors due to the brief periods where exposure is possible. In context of these expected low-level impacts, which are not expected to meaningfully affect important behavior, we also refer again to the large size of the migratory corridor (BIA of 269,448 km^2) compared with the survey area (5,868 km^2). Thus, the transitory nature of NARWs at this location means it is unlikely for any exposure to cause chronic effects as Atlantic Shores' planned survey area and ensonified zones are much smaller than the overall migratory corridor. Because of this, NMFS does not expect acute or cumulative stress to be a detrimental factor to NARWs from Atlantic Shores' described survey activities.

Comment 4: Oceana and COA asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed and potential activities on marine mammals and NARWs in particular and ensure that the cumulative effects are not excessive before issuing or renewing an IHA.

NMFS' response: Neither the MMPA nor NMFS' codified implementing regulations call for consideration of other unrelated activities and their impacts on populations. The preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989) states in response to comments that the impacts from other past and ongoing anthropogenic activities are to be incorporated into the negligible impact analysis via their impacts on the baseline. Consistent with that direction, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline, *e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and other relevant stressors. The 1989 final rule for the MMPA implementing regulations also addressed public comments regarding cumulative effects from future, unrelated activities. There NMFS stated that such effects are not considered in making findings under section 101(a)(5) concerning negligible impact. In this case, this IHA, as well as other IHAs currently in effect or proposed within the specified geographic region, are appropriately considered an unrelated activity relative to the others. The IHAs are unrelated in the sense that they are discrete actions under section 101(a)(5)(D), issued to discrete applicants.

Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the take incidental to a ''specified activity'' will have a negligible impact on the affected species or stocks of marine mammals. NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals. 50 CFR 216.104(a)(1). Thus, the ''specified activity'' for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant. Here, Atlantic Shores was the applicant for the IHA, and we are responding to the specified activity as described in that application (and making the necessary findings on that basis).

Through the response to public comments in the 1989 implementing regulations, NMFS also indicated (1) that we would consider cumulative effects that are reasonably foreseeable when preparing a NEPA analysis, and (2) that reasonably foreseeable cumulative effects would also be considered under section 7 of the ESA for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities, in similar locations, *e.g.,* the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey; the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island; the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; and the 2019 Orsted EA for survey activities offshore southern New England. Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by Atlantic Shores have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion for issuance of Atlantic Shores' IHA, which included consideration of extraordinary circumstances. Please see our response to Comment #21 below for more details.

Separately, the cumulative effects of substantially similar activities in the same geographic region have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (*https://repository.library.noaa.gov/view/noaa/29291*). Analyzed activities include those for which NMFS issued Atlantic Shores' 2020 IHA and subsequent 2021 renewal IHA (85 FR 21198; April 16, 2020 and 86 FR 21289; April 22, 2021), which are substantially similar to those planned by Atlantic Shores under this current IHA request. This Biological Opinion determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually *and* cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes, that while issuance of this IHA is covered under a different consultation, this BiOp remains valid and the surveys currently planned by Atlantic Shores from 2022 to 2023 could have fallen under the scope of those analyzed previously.

Comment 5: LBI has concluded that NMFS should include nearby survey activities in the analysis of this IHAs, specifically activities occurring in the Ocean Wind 1 (OCS–A 0498), as Atlantic Shores' survey activities are occurring during similar timeframes in similar spatial locations to the lease owned by Orsted Wind Power North America, LLC (Orsted). They noted that this was specifically important given the large number of offshore wind-related activities being considered in the northeast region and to appropriately assess cumulative impacts between projects.

NMFS' response: NMFS disagrees with LBI's statement that activities occurring by Orsted and Atlantic Shores' should be considered together in the MMPA action on that basis that they share a similar location geographically. We reiterate that under the MMPA, we are required to consider applications upon request. To date, NMFS has not received any joint application from Orsted and Atlantic Shores regarding their site characterization surveys off of New Jersey. While an individual company owning multiple lease areas may apply for a single authorization to conduct site characterization surveys across a combination of those lease areas, such as what was done by Orsted in their recent surveys from New York to Massachusetts (see 85 FR 63508, October 8, 2020; 87 FR 13975, March 11, 2022), this is not applicable in this case to the leases owned by Atlantic Shores and Orsted found off New Jersey. In the

future, if applicants wish to undertake this approach, NMFS is open to the receipt of joint applications and additional discussions on joint actions.

Furthermore, NMFS notes that the site characterization surveys covered under the current IHA (86 FR 26465; May 14, 2021) in Ocean Wind's lease are due to expire on May 9, 2022. While Ocean Wind has requested a renewal IHA and NMFS is seeking public comment on that request (87 FR 21098; April 11, 2022), NMFS has not yet made a decision to issue a final renewal IHA, entailing minimal current temporal overlap in activities performed under this IHA by Atlantic Shores to Ocean Wind's existing action (approximately 19 days of overlap). However, NMFS again notes that these both of these actions (Atlantic Shores' and Orsted's site characterization surveys) are occurring in spatially distinct areas and that it is highly unlikely for both entity's survey activities to occur in the same location at any one time. NMFS continues to reaffirm that any other authorization issued to Orsted relating to activities in OCS–A 0498 would be considered a discrete activity (refer back to the discussion in Comment #4) with its own separate and independent action.

Comment 6: Oceana states that NMFS must make an assessment of which activities, technologies and strategies are truly necessary to provide information to inform development of Atlantic Shores and which are not critical, asserting that NMFS should prescribe the appropriate survey techniques. In general, Oceana stated that NMFS must require that all IHA applicants minimize the impacts of underwater noise to the fullest extent feasible, including through the use of best available technology and methods to minimize sound levels from geophysical surveys.

NMFS' response: The MMPA requires that an IHA include measures that will effect the least practicable adverse impact on the affected species and stocks and, in practice, NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects on NARWs in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. Oceana does not make any specific recommendations of measures to add to the IHA. As part of the analysis for all marine site characterization survey IHAs, NMFS evaluated the effects expected as a result of the specified activity, made the necessary findings, and prescribed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to make judgments regarding what may be appropriate techniques or technologies for an operator's survey objectives.

Comment 7: Oceana suggests that PSOs complement their survey efforts using additional technologies, such as infrared detection devices when in low-light conditions.

NMFS' response: NMFS agrees with Oceana regarding this suggestion and a requirement to utilize a thermal (infrared) device during low-light conditions was included in the proposed **Federal Register** Notice. That requirement is included as a requirement of the issued IHA.

Comment 8: Oceana and COA recommended that NMFS restrict all vessels of all sizes associated with the proposed survey activities to speeds less than 10 knots (kn) at all times due to the risk of vessel strikes to NARWs and other large whales.

NMFS' response: While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for ship strike resulting from Atlantic Shores' activity and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to be discountable. These mitigation measures, most of which were included in the proposed IHA and all of which are required in the final IHA, include: A requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any SMA, DMA or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding NARW sighting locations; a requirement that all vessels greater than or equal to 19.8 m in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hour) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn or less until the 500 m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales; and a requirement that all vessels underway 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). We have determined that the ship strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have occurred for any marine site characterization surveys which were issued IHAs from NMFS during the survey activities themselves or while transiting to and from survey sites.

Comment 9: Oceana suggests that NMFS require vessels maintain a separation distance of at least 500 m from NARWs at all times.

NMFS' response: NMFS agrees with Oceana regarding this suggestion and a requirement to maintain a separation distance of at least 500 m from NARWs at all times was included in the proposed **Federal Register** Notice and was included as a requirement in the issued IHA.

Comment 10: Oceana recommended that the IHA should require all vessels supporting site characterization to be equipped with and using Class A Automatic Identification System (AIS) devices at all times while on the water. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the survey.

NMFS' response: NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and using Class A Automatic Identification System (devices) at all times while on the water. Indeed, there is a precedent for NMFS requiring such a stipulation for geophysical surveys in the Atlantic Ocean (38 FR 63268, December 7, 2018); however, these activities carried the potential for much more significant impacts than the marine site characterization surveys to be carried out by Atlantic Shores, with the potential for both Level A and Level B harassment take. Given the small

isopleths and small numbers of take authorized by this IHA, NMFS does not agree that the benefits of requiring AIS on all vessels associated with the survey activities outweighs and warrants the cost and practicability issues associated with this requirement.

Comment 11: Oceana asserts that the IHA must include requirements to hold all vessels associated with site characterization surveys accountable to the IHA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, and contract. They state that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics.

NMFS' response: NMFS agrees with Oceana and required these measures in the proposed IHA and final IHA. The IHA requires that a copy of the IHA must be in the possession of Atlantic Shores, the vessel operators, the lead PSO, and any other relevant designees of Atlantic Shores operating under the authority of this IHA. The IHA also states that Atlantic Shores must ensure that the vessel operator and other relevant vessel personnel, including the Protected Species Observer (PSO) team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations.

Comment 12: Oceana stated that the IHA must include a requirement for all phases of the Atlantic Shores site characterization to subscribe to the highest level of transparency, including frequent reporting to federal agencies, requirements to report all visual and acoustic detections of NARWs and any dead, injured, or entangled marine mammals to NMFS or the Coast Guard as soon as possible and no later than the end of the PSO shift. Oceana states that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website.

NMFS' response: NMFS agrees with the need for reporting and indeed, the MMPA calls for IHAs to incorporate reporting requirements. As included in the proposed IHA, the final IHA includes requirements for reporting that supports Oceana's recommendations. Atlantic Shores is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, and describes, assesses and compares the effectiveness of monitoring and mitigation measures. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report. Further the draft IHA and final IHA stipulate that if a NARW is observed at any time by any survey vessels, during surveys or during vessel transit, Atlantic Shores must immediately report sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System and to the U.S. Coast Guard, and that any discoveries of injured or dead marine mammals be reported by Atlantic Shores to the Office of Protected Resources, NMFS, and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. All reports and associated data submitted to NMFS are included on the website for public inspection.

Comment 13: Oceana and LBI recommended increasing the Exclusion Zone to either 1,000 m or 2,500 m, respectively, for NARWs.

NMFS' response: NMFS notes that the 500 m Exclusion Zone for NARWs exceeds the modeled distance to the largest 160 dB Level B harassment isopleth distance (141 m during sparker use) by a substantial margin. Commenters do not provide a compelling rationale for why the Exclusion Zone should be even larger. Given that these surveys are relatively low impact and that, regardless, NMFS has prescribed a NARW Exclusion Zone that is significantly larger (500 m) than the conservatively estimated largest harassment zone (141 m), NMFS has determined that the Exclusion Zone is appropriate. Further, Level A harassment is expected to result even in the absence of mitigation, given the characteristics of the sources planned for use. As described in the Mitigation section, NMFS has determined that the prescribed mitigation requirements are sufficient to effect the least practicable adverse impact on all affected species or stocks.

Comment 14: Oceana and LBI recommended that NMFS should require PAM at all times to maximize the probability of detection for NARWs. Commenters provided recommendations that NMFS should require Passive Acoustic Monitoring (PAM) at all times, both day and night, to maximize the probability of detection for NARWs, as well as other species and stocks. A private citizen also submitted a question regarding what other mitigation measures and approaches could be undertaken if a marine mammal is present in the area during survey activities but goes unobserved by PSOs.

NMFS' response: The commenters do not explain why they expect that PAM would be effective in detecting vocalizing mysticetes, nor does NMFS agree that this measure is warranted, as it is not expected to be effective for use in detecting the species of concern. It is generally accepted that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including NARWs) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1 µPa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.,* 2012; McKenna *et al.,* 2012; Rolland *et al.,* 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.,* 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

There are several additional reasons why we do not agree that use of PAM is warranted for 24-hour HRG surveys. While NMFS agrees that PAM can be an important tool for augmenting detection capabilities in certain circumstances, its utility in further reducing impact during HRG survey activities is limited. First, for this activity, the area expected to be

ensonified above the Level B harassment threshold is relatively small (a maximum of 141 m); this reflects the fact that, to start with, the source level is comparatively low and the intensity of any resulting impacts would be lower level and, further, it means that inasmuch as PAM will only detect a portion of any animals exposed within a zone, the overall probability of PAM detecting an animal in the harassment zone is low. Together these factors support the limited value of PAM for use in reducing take with smaller zones. PAM is only capable of detecting animals that are actively vocalizing, while many marine mammal species vocalize infrequently or during certain activities, which means that only a subset of the animals within the range of the PAM would be detected (and potentially have reduced impacts). Additionally, localization and range detection can be challenging under certain scenarios. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult.

Given that the effects to marine mammals from the types of surveys authorized in this IHA are expected to be limited to low level behavioral harassment even in the absence of mitigation, the limited additional benefit anticipated by adding this detection method (especially for NARWs and other low frequency cetaceans, species for which PAM has limited efficacy), and the cost and impracticability of implementing a full-time PAM program, we have determined the current requirements for visual monitoring are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat. NMFS has previously provided discussions on why PAM isn't a required monitoring measure during HRG survey IHAs in past **Federal Register** notices (see 86 FR 21289, April 22, 2021 and 87 FR 13975, March 11, 2022 for examples).

Regarding monitoring for species that may be present yet go unobserved, NMFS recognizes that visual detection based mitigation approaches are not 100 percent effective. Animals are missed because they are underwater (availability bias) or because they are available to be seen, but are missed by observers (perception and detection biases) (*e.g.,* Marsh and Sinclair, 1989). However, visual observation remains one of the best available methods for marine mammal detection. Although it is likely that some marine mammals may be present yet unobserved within the harassment zone, all expected take of marine mammals has been appropriately authorized. For mysticete species in general, it is unlikely that an individual would occur within the estimated 141 m harassment zone and remain undetected. For NARW in particular, the required Exclusion Zone is 500 m and, therefore, it is even less likely that an individual would approach the harassment zone undetected.

Comment 15: Oceana recommends a shutdown requirement if a NARW or other ESA-listed species is detected in the clearance zone as well as a publically available explanation of any exemptions as to why the applicant would not be able to shutdown in these situations.

NMFS' response: There are several shutdown requirements described in the **Federal Register** notice of the proposed IHA (87 FR 4200, January 27, 2022), and which are included in the final IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant Exclusion Zone while geophysical survey equipment is operational. There is no exemption for the shutdown requirement. In regards to reporting, Atlantic Shores must notify NMFS if a NARW is observed at any time by any survey vessels during surveys or during vessel transit. Additionally, Atlantic Shores is required to report the relevant survey activity information, such as such as the type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.,* pre-clearance survey, ramp-up, shutdown, end of operations, etc.) as well as the estimated distance to an animal and its heading relative to the survey vessel at the initial sighting and survey activity information. As documented in Atlantic Shores' preliminary monitoring report for the surveys completed under the previous 2020–2021 IHA (report available on our website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-characterization*), 34 events occurred where a shutdown was necessitated. We note that if a right whale is detected within the Exclusion Zone before a shutdown is implemented, the right whale and its distance from the sound source, including if it is within the Level B harassment zone, would be reported in Atlantic Shores' final monitoring report and made publicly available on NMFS' website. Atlantic Shores is required to immediately notify NMFS of any sightings of NARWs and report upon survey activity information. NMFS believes that these requirements address the commenter's concerns.

Comment 16: Oceana recommended that when HRG surveys are allowed to resume after a shutdown event, the surveys should be required to use a ramp-up procedure to encourage any nearby marine life to leave the area.

NMFS' response: NMFS agrees with this recommendation and included in the **Federal Register** notice of the proposed IHA (87 FR 4200, January 27, 2022) and this final IHA a stipulation that when technically feasible, survey equipment must be ramped up at the start or restart of survey activities. Ramp-up must begin with the power of the smallest acoustic equipment at its lowest practical power output appropriate for the survey. When technically feasible the power must then be gradually turned up and other acoustic sources added in a way such that the source level would increase gradually. NMFS notes that ramp-up would not be required for short periods where acoustic sources were shut down (*i.e.,* less than 30 minutes) if PSOs have maintained constant visual observation and no detections of marine mammals occurred within the applicable Exclusion Zones.

Comment 17: COA and LBI assert that Level A harassment may occur, and that this was not accounted for in the proposed Notice.

NMFS' response: NMFS acknowledges the concerns brought up by the commenters regarding the potential for Level A harassment of marine mammals. However, no Level A harassment is expected to result, even in the absence of mitigation, given the characteristics of the sources planned for use. This is additionally supported by the required mitigation and very small estimated Level A harassment zones described in Atlantic Shores' 2020 **Federal Register** notice (85 FR 21198, April 16, 2020) and carried through to the 2021 renewal IHA (86 FR 21289, April 22, 2021). Furthermore, the commenters do not provide any support for the apparent contention that Level A harassment is a potential outcome of these activities. As discussed in the notice of proposed IHA, NMFS considers this category of survey operations to be near *de minimis,* with the potential for Level A harassment for any species to be discountable.

Comment 18: COA is concerned that habitat displacement could significantly increase the risk of ship-strike to NARWs from outside the survey area.

NMFS' response: NMFS does not anticipate that NARWs would be displaced from the area where Atlantic Shores' marine site characterization

surveys would occur, and COA does not provide evidence that this effect should be a reasonably anticipated outcome of the specified activity. Similarly, NMFS is not aware of any scientific information suggesting that the survey activity would drive marine mammals into shipping lanes, and disagrees that this would be a reasonably anticipated effect of the specified activities. The take by Level B harassment authorized by NMFS is precautionary but considered unlikely, as NMFS' take estimation process does not account for the use of extremely precautionary mitigation measures, *e.g.,* the requirement for Atlantic Shores to implement a Shutdown Zone that is more than 3 times as large as the estimated harassment zone. These requirements are expected to largely eliminate the actual occurrence of Level B harassment events and, to the extent that harassment does occur, would minimize the duration and severity of any such events. Therefore, even if a NARW was in the area of the cable corridor surveys, a displacement impact is not anticipated.

Although the primary stressor to marine mammals from the specified activities is acoustic exposure to the sound source, NMFS takes seriously the risk of vessel strike and has prescribed measures sufficient to avoid the potential for ship strike to the extent practicable. NMFS has required these measures despite a very low likelihood of vessel strike; vessels associated with the survey activity will add a discountable amount of vessel traffic to the specific geographic region and, furthermore, vessels towing survey gear travel at very slow speeds (*i.e.,* roughly 4–5 kn).

Comment 19: COA is concerned regarding the number of species that could be impacted by the activities, as well as a lack of baseline data being available for species in the area. In addition, COA has stated that NMFS did not adequately address the potential for cumulative impacts to bottlenose dolphins from Level B harassment over several years of project activities.

NMFS' response: We appreciate the concern expressed by COA. NMFS utilizes the best available science when analyzing which species may be impacted by an applicant's proposed activities. Based on information found in the scientific literature, as well as based on density models developed by Duke University, all marine mammal species included in the proposed **Federal Register** Notice have some likelihood of occurring in Atlantic Shores' survey areas. Furthermore, the MMPA requires us to evaluate the effects of the specified activities in consideration of the best scientific evidence available and, if the necessary findings are made, to issue the requested take authorization. The MMPA does not allow us to delay decision making in hopes that additional information may become available in the future. Furthermore, NMFS notes that it has previously addressed discussions on cumulative impact analyses in previous comments and references COA back to these specific responses in this Notice.

Regarding the lack of baseline information cited by COA, with specific concern pointed out for harbor seals, NMFS points towards two sources of information for marine mammal baseline information: the Ocean/Wind Power Ecological Baseline Studies, January 2008–December 2009 completed by the New Jersey Department of Environmental Protection in July 2010 (*https://dspace.njstatelib.org/xmlui/handle/10929/68435*) and the Atlantic Marine Assessment Program for Protected Species (AMAPPS; *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/atlantic-marine-assessment-program-protected*) with annual reports available from 2010 to 2020 (*https://www.fisheries.noaa.gov/resource/publication-database/atlantic-marine-assessment-program-protected-species*) that cover the areas across the Atlantic Ocean. NMFS has duly considered this and all available information.

Based on the information presented, NMFS has determined that no new information has become available, nor do the commenters present additional information, that would change our determinations since the publication of the proposed notice.

Comment 20: COA and LBI indicated that they believe the survey area to be too large for the described proposed surveys as the geographical scope of the survey does not seem to match up with the stated site characterization survey area. Commenters justify this by saying that the export cable routes were not previously described in the Bureau of Ocean Energy Management's (BOEM) Construction and Operations Plans (COP) and Notice of Intent (NOI) and therefore cannot be included in the scope of activities requested by Atlantic Shores.

NMFS' response: It is not in NMFS' jurisdiction to dictate how and where an applicant's activities should be performed. Under the MMPA, NMFS must analyze and make findings, if possible, based on the specified activity as described by the applicant. Any comments by stakeholders regarding the geographical scope and size of survey activities, or what information is or is not included in BOEM's COP and NOI (*i.e.,* inclusion of the export cable routes) are out of scope for the described proposed action as BOEM, not NMFS, is in charge of leasing and activities occurring within a defined area and region.

Comment 21: LBI states its opposition to the use of a categorical exclusion under NEPA, asserting that, at minimum, an Environmental Assessment is the appropriate level of review.

NMFS' response: NMFS does not agree with LBI's comment. A categorical exclusion (CE) is a category of actions that an agency has determined does not individually or cumulatively have a significant effect on the quality of the human environment, and is appropriately applied for such categories of actions so long as there are no extraordinary circumstances present that would indicate that the effects of the action may be significant. Extraordinary circumstances are situations for which NOAA has determined further NEPA analysis is required because they are circumstances in which a normally excluded action may have significant effects. A determination of whether an action that is normally excluded requires additional evaluation because of extraordinary circumstances focuses on the action's potential effects and considers the significance of those effects in terms of both context (consideration of the affected region, interests, and resources) and intensity (severity of impacts). Potential extraordinary circumstances relevant to this action include (1) adverse effects on species or habitats protected by the MMPA that are not negligible; (2) highly controversial environmental effects; (3) environmental effects that are uncertain, unique, or unknown; and (4) the potential for significant cumulative impacts when the proposed action is combined with other past, present, and reasonably foreseeable future actions.

The relevant NOAA CE associated with issuance of incidental take authorizations is CE B4, ''Issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for the incidental, but not intentional, take by harassment of marine mammals during specified activities and for which no serious injury or mortality is anticipated.'' This action falls within CE B4. In determining whether a CE is appropriate for a given incidental take authorization, NMFS considers the applicant's

specified activity and the potential extent and magnitude of takes of marine mammals associated with that activity along with the extraordinary circumstances listed in the Companion Manual for NAO 216–6A and summarized above. The evaluation of whether extraordinary circumstances (if present) have the potential for significant environmental effects is limited to the decision NMFS is responsible for, which is issuance of the incidental take authorization. While there may be environmental effects associated with the underlying action, potential effects of NMFS' action are limited to those that would occur due to the authorization of incidental take of marine mammals. NMFS prepared numerous Environmental Assessments (EAs) analyzing the environmental impacts of the categories of activities encompassed by CE B4 which resulted in Findings of No Significant Impacts (FONSIs) and, in particular, numerous EAs prepared in support of issuance of IHAs related to similar survey actions are part of NMFS' administrative record supporting CE B4. These EAs demonstrate the issuance of a given incidental harassment authorization does not affect other aspects of the human environment because the action only affects the marine mammals that are the subject of the incidental harassment authorization. These EAs also addressed factors in 40 CFR 1508.27 regarding the potential for significant impacts and demonstrate the issuance of incidental harassment authorization for the categories of activities encompassed by CE B4 do not individually or cumulatively have a significant effect on the human environment.

Specifically for this action, NMFS independently evaluated the use of the CE for issuance of Atlantic Shores' IHA, which included consideration of extraordinary circumstances. As part of that analysis, NMFS considered including whether this IHA issuance would result in cumulative impacts that could be significant. In particular, the issuance of an IHA to Atlantic Shores is expected to result in minor, short-term behavioral effects on marine mammal species due to exposure to underwater sound from site characterization survey activities. Behavioral disturbance is expected to occur intermittently in the vicinity of Atlantic Shores' survey area during the one-year timeframe. Level B harassment will be reduced through use of mitigation measures described herein. Additionally, as discussed elsewhere, NMFS has determined that Atlantic Shores' activities fall within the scope of activities analyzed in GARFO's 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), which concluded surveys such as those planned by Atlantic Shores are not likely to adversely affect endangered listed species or adversely modify or destroy critical habitat. Accordingly, NMFS has determined that the issuance of this IHA will result in no more than negligible (as that term is defined by the Companion Manual for NAO 216–6A) adverse effects on species protected by the ESA and the MMPA.

Further, the issuance of this IHA will not result in highly controversial environmental effects or result in environmental effects that are uncertain, unique, or unknown because numerous entities have been engaged in site characterization surveys that result in Level B harassment of marine mammals in the United States. This type of activity is well documented; prior authorizations and analysis demonstrates issuance of an IHA for this type of action only affects the marine mammals that are the subject of the specific authorization and, thus, no potential for significant cumulative impacts are expected, regardless of past, present, or reasonably foreseeable actions, even though the impacts of the action may not be significant by itself. Based on this evaluation, we concluded that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Comment 22: LBI asserts that the notice of proposed IHA does not address compliance with the ESA, and states their assumption that NMFS relies on the 2013 Biological Assessment (BA) and Biological Opinion (BO), which can be found at *https://repository.library.noaa.gov/view/noaa/29291*. LBI goes on to find fault with the analysis conducted in support of the 2013 Opinion and states that NMFS cannot rely on the analysis for the necessary ESA compliance.

NMFS' response: LBI is incorrect. NMFS did not utilize the 2013 BA and BO for Atlantic Shores' 2022 site characterization surveys. As described in the notice of proposed IHA (87 FR 4217, 4225), NMFS determined that its proposed action of issuing an IHA in relation to the activities described in the application fell within the scope of the Programmatic Consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions, developed by the NMFS Greater Atlantic Regional Office (GARFO) in 2021. Furthermore, the Programmatic Consultation covered the region that Atlantic Shores' survey will occur in and also covered the equipment Atlantic Shores anticipates using during their surveys. The Programmatic Consultation further prescribed marine mammal-relevant specific Project Design Criteria (PDCs). Pursuant to section 7 of the ESA, NMFS has required compliance with these PDCs in the final IHA. This information can be found in both the proposed **Federal Register** Notice and the final Notice. More information can be found on GARFO's website (*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*) as well as on the NMFS' website for Atlantic Shores' specific action (*https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-0*).

Comment 23: LBI asserts that NMFS has not been sufficiently clear with regard to its use of density data, and expresses concern that the density data used may not be sufficiently conservative.

NMFS' response: As discussed in greater detail in the notice of proposed IHA, NMFS relied upon the best available scientific information in assessing the likelihood of occurrence for all potentially impacted marine mammal species, including the NARW. Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016b, 2017, 2018, 2021) represent the best available information regarding marine mammal densities in the survey area. Density data for all taxa are available for 10 km x 10 km grid cells over the entire survey area and, for most species (including NARW), are available for each of 12 months. For the exposure analysis, these density data were mapped using a geographic information system (GIS) for each of the survey areas (*i.e.,* Lease Area, ECR North, ECR South). Densities of each species were then averaged by season; thus, a density was calculated for each species for spring, summer, fall and winter. To be conservative, the greatest seasonal density calculated for each species was then carried forward in the exposure analysis. All density information used by NMFS is publicly available through Duke University's OBIS–SEAMAP website: *https://seamap.env.duke.edu/models/Duke/EC/*.

We note that LBI does not discuss what it means by stating that the

analysis may not be ''conservative,'' and does not connect this concern to the relevant requirements of the MMPA. However, NMFS believes that its approach to use of the density information, which was described in full in the notice of proposed IHA, addresses any such concerns.

Comment 24: LBI asserts that NMFS' assessment of the potential for, and the impacts of, masking (in particular for the NARW) is insufficient.

NMFS' response: NMFS disagrees that the potential impacts of masking were not properly considered. NMFS acknowledges our understanding of the scientific literature that LBI cited but, fundamentally, the masking effects to any one individual whale from one survey are expected to be minimal. Masking is referred to as a chronic effect because one of the key harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also, inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency) and, as our analysis (both quantitative and qualitative components) indicates, because of the relative movement of whales and vessels, we do not expect these exposures with the potential for masking to be of a long duration within a given day. Further, because of the relatively low density of mysticetes, and relatively large area over which the vessels travel, we do not expect any individual whales to be exposed to potentially masking levels from these surveys for more than a few days in a year.

As noted above, any masking effects of this survey are expected to be limited and brief, if present. Given the likelihood of significantly reduced received levels beyond even short distances from the survey vessel, combined with the short duration of potential masking and the lower likelihood of extensive additional contributors to background noise offshore and within these short exposure periods, we believe that the incremental addition of the survey vessel is unlikely to result in more than minor and short-term masking effects, likely occurring to some small number of the same individuals captured in the estimate of behavioral harassment.

Comment 25: LBI requests that NMFS explain why a 20 dB propagation loss coefficient was applicable to the analysis presented in the proposed Notice or to go back and rerun the analysis using a 15 dB propagation loss coefficient.

NMFS' response: LBI states that NMFS' assumption that use of a 20logR transmission loss factor (*i.e.,* spherical spreading) is inappropriate, and states that ''According to a number of scientific sources, the use of a noise propagation loss coefficient of 20 dB per tenfold increase in distance represents ''spherical spreading'' and is only appropriate in the ''near field'' where the calculated horizontal distance is comparable with the water depth.'' However, LBI does not cite any such scientific sources, so NMFS must evaluate LBI's recommendations based only on its comment.

A major component of transmission loss is spreading loss and, from a point source in a uniform medium, sound spreads outward as spherical waves (''spherical spreading'') (Richardson *et al.,* 1995). In water, these conditions are often thought of as being related to deep water, where more homogenous conditions may be likely. However, the theoretical distinction between deep and shallow water is related more to the wavelength of the sound relative to the water depth, versus to water depth itself. Therefore, when the sound produced is in the kilohertz range, where wavelength is relatively short, much of the continental shelf may be considered ''deep'' for purposes of evaluating likely propagation conditions.

As described in the notice of proposed IHA, the area of water ensonified at or above the root mean square (RMS) 160 dB threshold was calculated using a simple model of sound propagation loss, which accounts for the loss of sound energy over increasing range. Our use of the spherical spreading model (where propagation loss = 20 * log [range]; such that there would be a 6-dB reduction in sound level for each doubling of distance from the source) is a reasonable approximation over the relatively short ranges involved. Even in conditions where cylindrical spreading (where propagation loss = 10 * log [range]; such that there would be a 3-dB reduction in sound level for each doubling of distance from the source) may be appropriate (*e.g.,* non-homogenous conditions where sound may be trapped between the surface and bottom), this effect does not begin at the source. In any case, spreading is usually more or less spherical from the source out to some distance, and then may transition to cylindrical (Richardson *et al.,* 1995). For these types of surveys, NMFS has determined that spherical spreading is a reasonable assumption even in relatively shallow waters (in an absolute sense) as the reflected energy from the seafloor will be much weaker than the direct source and the volume influenced by the reflected acoustic energy would be much smaller over the relatively short ranges involved.

In support of its position, LBI cites several examples of use of practical spreading (a useful real-world approximation of conditions that may exist between the theoretical spreading modes of spherical and cylindrical; 15logR) in asserting that this approach is also appropriate here. However, these examples (U.S. Navy construction at Newport, RI, and NOAA construction in Ketchikan, AK) are not relevant to the activity at hand. First, these actions occur in even shallower water (*e.g.,* less than 10 m for Navy construction). Of greater relevance to the action here, pile driving activity produces sound with longer wavelengths than the sound produced by the acoustic sources planned for use here. As noted above, a determination of appropriate spreading loss is related to the ratio of wavelength to water depth more than to a strict reading of water depth. NMFS indeed uses practical spreading in typical coastal construction applications, but for reasons described here, uses spherical spreading when evaluating the effects of HRG surveys on the continental shelf.

In addition, this analysis is likely conservative for other reasons, *e.g.,* the lowest frequency was used for systems that are operated over a range of frequencies and other sources of propagation loss are neglected.

NMFS has determined that spherical spreading is the most appropriate form of propagation loss for these surveys and has relied on this approach for past IHAs with similar equipment, locations, and depths. Please refer back to the Garden State HRG IHA (83 FR 14417; April 4, 2018) and the 2019 Skipjack HRG IHA (84 FR 51118; September 27, 2019) for examples. Prior to the issuance of these IHAs (approximately 2018 and older), NMFS typically relied upon practical spreading for these types of survey activities. However, as additional scientific evidence became available, including numerous sound source verification reports, NMFS determined that this approach was inappropriately conservative and, since that time, as consistently used spherical spreading. Furthermore, NMFS' User Spreadsheet tool assumes a ''safe distance''

methodology for mobile sources where propagation loss is spherical spreading (20LogR) (*https://media.fisheries.noaa.gov/2020-12/User_Manual%20_DEC_2020_508.pdf?null*), and NMFS calculator tool for estimating isopleths to Level B harassment thresholds also incorporates the use of spherical spreading.

Comment 26: LBI suggests that NMFS utilize a source level of 211 dB instead of the 203 dB for the Dura-Spark 240, as was cited in the proposed **Federal Register** Notice. NMFS notes that as LBI did not provide the metric for the source levels that they refer to in their letter, NMFS will use the one that was referenced in the proposed **Federal Register** Notice.

NMFS' response: NMFS disagrees with LBI's recommendation, and has determined that the 203 dB source level is the most appropriate for use herein. As discussed in the notice of proposed IHA, the Applied Acoustics Dura-Spark was included and measured in Crocker and Fratantonio (2016), but not with an energy setting near 800 J, the energy setting which was determined as the ''worst-case scenario'' by Atlantic Shores for use in the presence of denser substrates. The SIG ELC 820 sparker was deemed as a similar alternative to the Dura-Spark based on information in Table 9 of Crocker and Fratantonio (2016), and where higher energy setting of 750 J (at a 5 m depth) had been measured. We also note that using the SIG ELC as a surrogate system has been previously documented and employed in other issued IHAs, such as the Mayflower Wind HRG surveys (86 FR 38033, July 19, 2021). NMFS further based this decision on further information on the SIG acoustic source, Crocker and Fratantonio (2016), and other IHA applications (see Mayflower Wind's application at *https://media.fisheries.noaa.gov/2021-02/Mayflower-2021HA_Appl_OPR1.pdf?null*=). The frequency ranges provided for the SIG ELC represent a broad range (0.01–1.9 kHz), which includes the highest bandwidth at the 750 J reported in Crocker and Fratantonio (2016).

We also note that, based on additional discussion with Atlantic Shores, a power level of 750 J was likely an overestimate and that 500–600 J was more likely to be used during the HRG surveys and that 750 was a conservative overestimate. NMFS included this information in the proposed **Federal Register** Notice under Table 2. The use of information that appropriately addresses the potential for use at the higher power level means that the analysis herein, including the selection of source level, is conservative for most typical applications of the acoustic sources.

Comment 27: LBI asserts that NMFS has not appropriately considered the location of NARW migratory habitat in relation to the survey and, in so doing, has not correctly evaluated the potential for impacts to NARW migratory habitat.

NMFS' response: NMFS disagrees in LBI's assertion regarding NARW migratory habitat. As we previously stated above in response to Comment #2, the migratory habitat of the NARW is very large in comparison to the overall size of Atlantic Shores' survey area but also, importantly, we do not expect any meaningful or significant impacts to important behavior that may occur within the portion of this habitat that may be impacted by the specified activity. Because of this, we expect that any potential exposures NARWs may experience when transiting the migratory corridor would not result in more than behavioral harassment to a minor degree. As is necessary for authorizations issued under the MMPA, we have fully evaluated any potential impacts to both the important behaviors of marine mammals (including NARWs) and to their important habitats to make our negligible impact determination.

Comment 28: LBI suggests that NMFS should use more conservative information related to the acoustic output of the sources planned for use (*i.e.,* a higher source level and a lower transmission loss coefficient), and performed its own analysis of these alternative scenarios. LBI notes that these changes would increase the size of the estimated Level B harassment zone and, as a result, increase the expected take numbers. LBI also recommends, as a result of their analysis, that the Exclusion Zone be increased to 2,500 m.

NMFS' response: NMFS disagrees that the changes suggested by LBI are appropriate. We have addressed use of the alternate source level and the recommendation of lower assumed propagation loss in previous responses to comments herein. While NMFS acknowledges that, if one assumes the most conservative values at every opportunity, the analysis will produce higher estimates of harassment zone size and of incidental take. However, the assumptions made by LBI are not realistic, and LBI does not adequately justify the assumptions made in its overly conservative analysis.

Comment 29: LBI asserts that the potential for Level A harassment, serious injury and/or death impacts have been insufficiently addressed in NMFS' analysis. LBI also suggests that NMFS must perform a ''cumulative PTS analysis''.

NMFS' response: The commenter appears to mistakenly reference NMFS' historical Level A harassment threshold of 180 dB rms SPL received level in addressing this issue. However, in 2018, NMFS published Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing, which updated the 180 dB SPL Level A harassment threshold. Since that time, NMFS has been applying dual threshold criteria based on both peak pressure and cumulative sound exposure level thresholds. This dual criteria approach requires that the more conservative of the two hearing group-specific threshold criteria be applied in evaluating the potential for Level A harassment. Therefore, NMFS has considered the potential for Level A harassment on the basis of cumulative sound exposure level (as well as peak pressure) in the way suggested by LBI.

As described in the Estimated Take section, NMFS has established a PTS (Level A harassment) threshold of 183 dB cumulative SEL for low frequency specialists. In support of a previous IHA request (see the proposed 2020 Notice (85 FR 7926; February 12, 2020) and the final 2020 Notice (85 FR 21198, April 16, 2020)), Atlantic Shores provided estimated Level A harassment zones for similar equipment (*i.e.,* the Applied Acoustics Dura-Spark 240 sparker). Despite assuming a higher source level than is used herein, the result of this analysis shows that a NARW would have to come within 1 m of the sparker to potentially incur PTS. NMFS has reviewed the analysis found in Atlantic Shores' 2020 HRG IHA application and confirmed that it is accurate and relevant to this action. This application can be found on NMFS' website at *https://media.fisheries.noaa.gov/dam-migration/atlanticshores_2020_app_opr1.pdf.*

Not only are NARWs migrating through the area, meaning that their occurrence in the area is expected to be of relatively brief duration and the likelihood of exposures of longer duration or at closer range minimized, Atlantic Shores is also required to not approach any NARW within 500 m or operate the sparker within 500 m of a NARW (see 87 FR 4217 of the proposed Notice). As such, there is essentially no potential for a NARW to experience PTS (*i.e.,* Level A harassment) from the described surveys.

Comment 30: LBI insists that NMFS do an in-depth analysis of any potential serious injury and/or death to NARWs that could occur during Atlantic Shores'

surveys. They further state that any serious injury or mortality could occur directly from the NARW's migration being impacted by cumulative sound exposure leading to PTS, any adverse reactions from behavioral disruption, and masking.

NMFS' response: The best available science indicates that Level B harassment, or disruption of behavioral patterns, may occur. No mortality or serious injury is expected to occur as a result of the planned surveys, and there is no scientific evidence indicating that any marine mammal could experience these as a direct result of noise from geophysical survey activity. Authorization of mortality and serious injury may not occur via IHAs, only within Incidental Take Regulations (ITRs), and such authorization was neither requested nor proposed. NMFS notes that in its history of authorizing take of marine mammals, there has never been a report of any serious injuries or fatalities of a marine mammal related to the site characterization surveys, including for NARWs. We emphasize that an estimate of take numbers alone is not sufficient to assess impacts to a marine mammal population. Take numbers must be viewed contextually with other factors, as explained in the ''Negligible Impact Analyses and Determinations'' section of this Notice.

Comment 31: LBI states that to properly make a negligible impact determination, NMFS should develop/provide criteria to avoid jeopardizing the existence and survival of the NARW. LBI states that this would ideally include no instances of fatality or serious injury from survey noise and meet that strict criterion with high statistical confidence. LBI notes that they believe the current proposed Notice for Atlantic Shores' surveys does not meet this criteria.

NMFS' response: LBI's comment is founded on the presumption, absent evidence, that serious injury or mortality is a reasonably anticipated outcome of Atlantic Shores' specified activity. NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity, and LBI provides no information to the contrary. We also refer LBI to the GARFO 2021 Programmatic Consultation, which finds that these survey activities are in general not likely to adversely affect ESA-listed marine mammal species, *i.e.,* GARFO's analysis conducted pursuant to the ESA finds that marine mammals are not likely to be taken at all (as that term is defined under the ESA), much less be taken by serious injury or mortality. That document is found here: *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.*

Comment 32: LBI states that it believes NMFS' negligible impact finding for NARWs to be insufficient given the analysis LBI included in their letter, which produced higher take numbers for marine mammals, including NARWs. LBI also states that, based on their assertion that serious injury and/or mortality is a potential outcome of the specified activity for NARWs, a Rulemaking (Incidental Take Regulation with subsequent Letters of Authorization) would be necessary to undertake Atlantic Shores' site characterization surveys due to LBI's premise that take by serious injury and/or mortality may occur.

NMFS' response: NMFS acknowledges that authorization under section 101(a)(5)(A) of the MMPA would be required were mortality or serious injury an expected outcome of the action. However, as noted previously, there is no scientific evidence suggesting that such outcomes are possible and, therefore, an IHA issued under section 101(a)(5)(D) is appropriate. Similarly, if the analysis presented by LBI were considered credible, the results would necessitate a revision to NMFS' negligible impact determination. However, as detailed in previous comment responses, the LBI analysis is not based on the best scientific evidence available, and NMFS does not consider it to be a credible analysis. Separately, it appears that LBI equates Level A harassment with serious injury and mortality in suggesting that Incidental Take Regulations are required. As discussed herein, Level A harassment is not an expected outcome of the specified activity. However, we clarify that section 101(a)(5)(D) of the MMPA, which governs the issuance of IHAs, indicates that the ''the Secretary shall authorize . . . . taking by harassment [. . . .]'' The definition of ''harassment'' in the MMPA clearly includes both Level A and Level B harassment.

LBI further suggested that NMFS should promulgate programmatic Incidental Take Regulations for site characterization activities. Although NMFS is open to this approach, we have not received a request for such regulations and NMFS reminds LBI that the MMPA only allows for the development of Incidental Take Regulations upon request. LBI states that this would be necessary based on the potential for serious injury or mortality that was assumed in LBI's letter. However, as discussed previously, NMFS does not expect any serious injury or mortality, even absent mitigation efforts, because of the nature of the activities described in the proposed **Federal Register** Notice. Furthermore, NMFS included a vessel strike analysis in the proposed Notice under the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section. We identified that at average transit speed for geophysical survey vessels, the probability of serious injury or mortality resulting from a strike is low enough to be discountable. However, the likelihood of a strike actually happening is again low given the smaller size of these vessels and generally slower speeds during transit. Further, Atlantic Shores is required to implement monitoring and mitigation measures during transit, including observing for marine mammals and maintaining defined separation distances between the vessel and any marine mammal (see the Mitigation and Monitoring and Reporting sections). Finally, despite several years of marine site characterization surveys occurring off the U.S. east coast, no vessels supporting offshore wind development have struck a marine mammal either in transit or during surveying. Because vessel strikes are not reasonably expected to occur, no such take is authorized. The mitigation measures in the IHA related to vessel strike avoidance are not limited to vessels operating within the survey area or cable corridors and therefore apply to transiting vessels. Because of these reasons and the addition of mitigation efforts, including required vessel separation distances to further reduce any risk, we do not find that a Rulemaking is necessary for Atlantic Shores' HRG surveys.

Comment 33: LBI suggests that as a means of effecting the Least Practicable Adverse Impacts, as required under the MMPA, survey activities should be prohibited from January through April, as well as in November. Furthermore, LBI suggests that an annual Seasonal Management Area (SMA) be established in and adjacent to the survey area to mitigate against any vessel strike.

NMFS' response: NMFS assumes this is regarding the NARW and shares concern with LBI regarding the status of the NARW, given that a UME has been in effect for this species since June of 2017 and that there have been a number of recent mortalities. NMFS appreciates the value of seasonal restrictions under some circumstances. However, in this

case, we have determined seasonal restrictions are not warranted. We reiterate a response from earlier where NARW occurrence in this area is generally low most of the year. Furthermore, NMFS has already stated that this area consists only of migratory habitat for the NARW, consisting of no primary foraging habitat, which would further reduce the risks of exposure and impacts. Further, NMFS is requiring Atlantic Shores to comply with restrictions associated with identified SMAs and they must comply with DMAs, if any DMAs are established near the survey area. Finally, significantly shortening Atlantic Shores work season is impracticable given the number of survey days planned for the specified activity for this IHA.

NMFS wishes to clarify that existing and permanent SMAs have been previously established under a different rulemaking (73 FR 60173 and can also be found on NMFS' website at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales#speedlimit*), but that NMFS appreciates the suggestion provided by LBI and will take the comment of developing additional SMAs under consideration.

Changes From the Proposed IHA to Final IHA

Since publication of the Notice of proposed IHA, NMFS has acknowledged that the population estimate of NARWs is now under 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*). However, as discussed in our response to Comment #2 above, NMFS has determined that this change in abundance estimate would not change the estimated take of NARWs or authorized take numbers, nor affect our ability to make the required findings under the MMPA for Atlantic Shores' survey activities. The status and trends of the NARW population remain unchanged.

NMFS considered all public comments received and determined that no changes to the final IHA were necessary.

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. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://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's website (*https://www.fisheries.noaa.gov/find-species).*

Table 3 lists all species or stocks for which take is authorized for this action, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2021). 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's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species 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's 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 managed stocks in this region are assessed in NMFS's draft 2021 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment. All values presented in Table 3 are the most recent available at the time of publication and are available in the draft 2021 SARs available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 3—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE SURVEY AREA THAT MAY BE AFFECTED BY ATLANTIC SHORES' PLANNED HRG 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 Cetartiodactyla—Cetacea—Superfamily Mysticeti(baleen whales)						
North Atlantic right whale	*Eubalaena glacialis*	Western Atlantic Stock	E/D, Y	[5] 368 (0; 364; 2019)	0.7	7.7
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
Superfamily 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	29
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic Stock	-/-, N	93,233 (0.71; 54,443; 2016).	544	227
Bottlenose dolphin	*Tursiops truncatus*	Western North Atlantic Northern Migratory Coastal Stock.	-/D, Y	6,639 (0.41; 4,759; 2016)	48	12.2–21.5
		Western North Atlantic Offshore Stock.	-/-, N	62,851 (0.23; 51,914; 2016).	519	28
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

TABLE 3—MARINE MAMMAL SPECIES LIKELY TO OCCUR NEAR THE SURVEY AREA THAT MAY BE AFFECTED BY ATLANTIC SHORES' PLANNED HRG ACTIVITIES—Continued

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]
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—Superfamily 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).	1,389	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 and serious injury (M/SI) 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 M/SI plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

[4] NMFS' stock abundance estimate (and associated PBR value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,431. The annual mortality and serious injury (M/SI) value given is for the total stock.

[5] The draft 2022 SARs have yet to be released; however, NMFS has updated its species web page to recognize the population estimate for NARWs is now below 350 animals (*https://www.fisheries.noaa.gov/species/north-atlantic-right-whale*).

A detailed description of the species likely to be affected by Atlantic Shores' activities, including information regarding population trends and threats, and local occurrence, were provided in the **Federal Register** notice for the proposed IHA (87 FR 4200; January 27, 2022). Since that time, we are not aware of any changes in the status of these species and stocks or other relevant new information; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for those descriptions. Please also refer to NMFS's website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

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. Current data indicate that 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) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. 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 4.

TABLE 4—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, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Fifteen marine mammal species (13 cetacean and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the survey activities. Please refer back to Table 3. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), seven are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the deployed acoustic sources have the potential to result in behavioral harassment of marine mammals in the vicinity of the study area. The **Federal Register** notice for the proposed IHA (87 FR 4200; January 27, 2022) included a discussion of the effects of anthropogenic noise, ship strike, stress, and potential impacts on marine mammals and their habitat, therefore that information is not repeated here; please refer to the **Federal Register** notice (87 FR 4200; January 27, 2022) for that information.

Estimated Take

This section provides the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

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 will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise from certain HRG acoustic sources. Based primarily on the characteristics of the signals produced by the acoustic sources planned for use and the required mitigation measures, Level A harassment is neither anticipated nor will be authorized. Take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use, and will not be authorized. Implementation of required mitigation further reduces this potential. Furthermore and as previously described, no serious injury or mortality is anticipated or will be authorized for this activity. Below we describe how the take is estimated.

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) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of 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 authorized take estimate.

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 (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals may be behaviorally harassed (*i.e.,* Level B harassment) when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 µPa (rms) for the impulsive sources (*i.e.,* sparkers) and non-impulsive, intermittent sources (*e.g.,* CHIRPs) evaluated here for Atlantic Shores' survey activities.

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). These thresholds are provided in the table below (Table 5). The references, analysis, and methodology used in the development of the thresholds are described in NMFS (2018) Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.

TABLE 5—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$*:* 232 dB; $L_{E,OW,24h}$*:* 203 dB	*Cell 10:* $L_{E,OW,24h}$*:* 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, ANSI defines peak sound pressure as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Similar to the past IHAs issued to Atlantic Shores and published in the **Federal Register** (see the 2020 notice (85 FR 7926; February 12, 2020)), the planned activities for 2022 include the use of impulsive (*i.e.,* sparkers) and non-impulsive (*e.g.,* CHIRPs) sources. Carrying through the same logic as the locations, species, survey durations, equipment used, and source levels are all of a similar scope previously analyzed for Atlantic Shores' surveys, and as discussed previously, NMFS has concluded that Level A harassment is not a reasonably likely outcome for marine mammals exposed to noise through use of the sources planned for use here due to the mitigation measures Atlantic Shores will implement, and the potential for Level A harassment is not evaluated further in this document. Atlantic Shores did not request authorization of take by Level A harassment, and no take by Level A harassment will be authorized by NMFS.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include 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 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 (see Table 6).

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 when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that 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 2 shows the HRG equipment types that may be used during the planned surveys and the source levels associated with those HRG equipment types. The computations and results from the Level B ensonified area analysis are displayed in Tables 6 and 7 below.

TABLE 6—INPUTS INTO THE LEVEL B HARASSMENT SPREADSHEET FOR HIGH RESOLUTION GEOPHYSICAL SOURCES USING A TRANSMISSION LOSS COEFFICIENT OF 20

Source name	Input values in spreadsheet					Computed values (meters)	
	Threshold level	Source level (dBrms)	Frequency (kH)	Beamwidth (degrees)	Water depth (m)	Slant distance of threshold	Horizontal threshold range (m)
SIG ELC 820 Sparker at 750J *	160	203	0.01	180	5	141	141
Geo Marine Survey System 2D SUHRS at 400J	160	195	0.2	180	5	56	56
Edgetech 2000–DSS	160	195	2	24	5	56	1
Edgetech 216	160	179	2	24	5	9	1
Edgetech 424	160	180	4	71	10	10	6
Edgetech 512i	160	179	0.7	80	10	9	6
Pangeosubsea Sub-Bottom Imager™	160	190	4	120	5	32	9

* Used as a proxy for the Applied Acoustics Dura-Spark 240 because the specific energy setting is not described in Crocker and Franantonio (2016).

TABLE 7—MAXIMUM DISTANCES TO LEVEL B 160 dB_{RMS} THRESHOLD BY EQUIPMENT TYPE OPERATING BELOW 180 KHZ

HRG survey equipment (sub-bottom profiler)	Representative equipment type	Distances to level B threshold (m)
Sparker	Applied Acoustics Dura-Spark 240	141
	Geo Marine Survey System 2D SUHRS	56
CHIRP	Edgetech 2000–DSS	56
	Edgetech 216	9
	Edgetech 424	10
	Edgetech 512i	9
	Pangeosubsea Sub-Bottom Imager™	32

Results of modeling using the methodology described and shown above indicated that, of the HRG survey equipment planned for use by Atlantic Shores that has the potential to result in Level B harassment of marine mammals, the Applied Acoustics Dura-Spark 240 would produce the largest Level B harassment isopleth (141 m; please refer back to Table 7 above, as well as Table 6–1 in Atlantic Shores' IHA application). Estimated Level B harassment isopleths associated with the CHIRP equipment planned for use are also found in Table 7. All CHIRPs equipment produced Level B harassment isopleths much smaller than the Applied Acoustics Dura-Spark 240 sparker did.

Although Atlantic Shores does not expect to use sparker sources on all planned survey days and during the entire duration that surveys are likely to occur, Atlantic Shores assumed, for purposes of analysis, that the sparker would be used on all survey days and across all hours. This is a conservative approach, as the actual sources used on individual survey days will likely produce smaller harassment distances.

Marine Mammal Occurrence

In this section, we provide the information about presence, density, or group dynamics of marine mammals that will inform the take calculations.

Habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory and the Marine-life Data and Analysis Team, based on the best available marine mammal data from 1992–201 obtained in a collaboration between Duke University, the Northeast Regional Planning Body, the University of North Carolina Wilmington, the Virginia Aquarium and Marine Science Center, and NOAA (Roberts *et al.,* 2016a; Curtice *et al.,* 2018), represent the best available information regarding marine mammal densities in the survey area. More recently, these data have been updated with new modeling results and include density estimates for pinnipeds (Roberts *et al.,* 2016b, 2017, 2018).

The density data presented by Roberts *et al.* (2016b, 2017, 2018, 2020) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from eight physiographic and 16 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.,* 2016a). In subsequent years, certain models have been updated based on additional data as well as certain methodological improvements. 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 (Roberts *et al.,* 2016b, 2017, 2018, 2020). The updated models incorporate additional sighting data, including sightings from NOAA's Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys.

For the exposure analysis, density data from Roberts *et al.* (2016b, 2017, 2018, 2021) were mapped using a geographic information system (GIS). For each of the survey areas (*i.e.,* Lease Area, ECR North, ECR South), the densities of each species as reported by Roberts *et al.* (2016b, 2017, 2018, 2021) were averaged by season; thus, a density was calculated for each species for spring, summer, fall and winter. To be conservative, the greatest seasonal density calculated for each species was then carried forward in the exposure analysis. Estimated seasonal densities (animals per km^2) of all marine mammal species that may be taken during the planned survey activities, for all survey areas are shown in Tables C–1, C–2 and C–3 in Appendix C of Atlantic Shores' IHA application. The maximum seasonal density values used to estimate take numbers are shown in Table 8 below. Below, we discuss how densities were assumed to apply to specific species for which the Roberts *et al.* (2016b, 2017, 2018, 2021) models provide results at the genus or guild level.

TABLE 8—MAXIMUM SEASONAL MARINE MAMMAL DENSITIES (NUMBER OF ANIMALS PER 100 KM^2) IN THE SURVEY AREAS

[Appendix C of Atlantic Shores' IHA application]

Species groups	Species	Maximum seasonal densities		
		Lease area	ECR north	ECR south
Cetaceans	North Atlantic right whale	0.499	0.182	0.179
	Humpback whale	0.076	0.082	0.103
	Fin whale	0.100	0.080	0.057
	Sei whale	0.004	0.004	0.002
	Minke whale	0.055	0.017	0.019
	Sperm whale	0.013	0.005	0.003
	Long-finned pilot whale	0.036	0.012	0.009
	Bottlenose dolphin (Western North Atlantic coastal—migratory)	.....	21.675	58.524

TABLE 8—MAXIMUM SEASONAL MARINE MAMMAL DENSITIES (NUMBER OF ANIMALS PER 100 KM^2) IN THE SURVEY AREAS—Continued

[Appendix C of Atlantic Shores' IHA application]

Species groups	Species	Maximum seasonal densities		
		Lease area	ECR north	ECR south
	Bottlenose dolphin (Western North Atlantic—offshore)	21.752	21.675	58.524
	Common dolphin	3.120	1.644	1.114
	Atlantic white-sided dolphin	0.487	0.213	0.152
	Atlantic spotted dolphin	0.076	0.059	0.021
	Risso's dolphin	0.010	0.001	0.002
	Harbor porpoise	2.904	7.357	2.209
Pinnipeds	Gray seal	4.918	9.737	6.539
	Harbor seal	4.918	9.737	6.539

Note: Many of the densities provided in this table have been previously used and applied during the 2020 IHA to Atlantic Shores and its subsequent renewal and remain applicable.

For bottlenose dolphin densities, Roberts *et al.* (2016b, 2017, 2018) does not differentiate by stock. The Western North Atlantic northern migratory coastal stock is generally expected to occur only in coastal waters from the shoreline to approximately the 20 m (65 ft) isobath (Hayes *et al.,* 2018). As the Lease Area is located within depths exceeding 20 m, where the offshore stock would generally be expected to occur, all calculated bottlenose dolphin exposures within the Lease Area were assigned to the offshore stock. However, both stocks have the potential to occur in the ECR North and ECR South survey areas. To account for the potential for mixed stocks within ECR North and South, the survey areas ECR North and South were divided approximately along the 20 m depth isobath, which roughly corresponds to the 10-fathom contour on NOAA navigation charts. As approximately 33 percent of ECR North and ECR South are 20 m or less in depth, 33 percent of the estimated take calculation for bottlenose dolphins was applied to the Western North Atlantic northern migratory coastal stock and the remaining 67 percent was applied to the offshore stock.

For these surveys, Atlantic Shores used the same pilot whale densities that were previously used in the 2020 and subsequent 2021 (renewal) IHAs. To better estimate the number of pilot whales that could potentially be impacted by the planned surveys, although exposure is noted as unlikely to occur in the IHA application, Atlantic Shores adjusted the take estimate by average group size.

Because the seasonality, feeding preferences, and habitat use by gray seals often overlaps with that of harbor seals in the survey areas, it was assumed that modeled takes of seals could occur to either of the respective species. Furthermore, as the density models produced by Roberts *et al.* (2016b, 2017, 2018) do not differentiate between the different pinniped species, the same density estimates were applied to both seal species. Because of this, pinniped density values reported in Atlantic Shores' IHA application are described as ''seals'' and not species-specific.

Since Atlantic Shores' 2020 and 2021 (renewal) IHAs for HRG surveys were completed, the NARW density data has been updated. This is due to the inclusion of three new datasets: 2011–2015 Northeast Large Pelagic Survey Cooperative, 2017–2018 Marine Mammal Surveys of the Wind Energy Areas conducted by the New England Aquarium, and 2017–2018 New York Bight Whale Monitoring Program surveys conducted by the New York State Department of Environmental conservation (NYSDEC). This new density data shows distribution changes that are likely influenced by oceanographic and prey covariates in the whale density model (Roberts *et al.,* 2021).

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

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 Applied Acoustics Dura-Spark 240) to the Level B harassment criterion and the estimated distance traveled per day by a given survey vessel (*i.e.,* 55 km (34.2 mi)) are then used to calculate the daily ensonified area, or zone of influence (ZOI) around the survey vessel.

Atlantic Shores estimates that surveys will achieve a maximum daily track line distance of 55 km per day (24-hour period) during the IHA effective period. This distance accounts for the vessel traveling at approximately 3.5 knots and accounts for non-active survey periods. Based on the maximum estimated distance to the Level B harassment threshold of 141 m (Table 7) and the maximum estimated daily track line distance of 55 km across all survey sites, an area of 15.57 km^2 would be ensonified to the Level B harassment threshold per day across all survey sites during Atlantic Shores' HRG surveys (Table 9) based on the following formula:

$$Mobile\ Source\ ZOI = (Distance/day \times 2r) + \pi r^2$$

Where:

Distance/day = the maximum distance a survey vessel could travel in a 24-hour period; and

r = the maximum radial distance from a given sound source to the NOAA Level A or Level B harassment thresholds.

TABLE 9—MAXIMUM HRG SURVEY AREA DISTANCES FOR ATLANTIC SHORES' SURVEYS

Survey area	Number of active survey days	Survey distances per day in km (mi)	Maximum radial distance (r) in m (ft)	Calculated ZOI per day (km^2)	Total annual ensonified area (km^2)
Lease Area	120	55 (34.2)	141 (463)	15.57	1,868.4
ECR North	180	.....	.....	.....	2,802.6
ECR South	60	.....	.....	.....	934.2

As described above, 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.

The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area (animals/km^2), incorporating the maximum seasonal estimated marine mammal densities as described above. Estimated numbers of each species taken per day across all survey sites are then multiplied by the total number of survey days (*i.e.,* 360). 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 is shown below in Table 10:

$$Estimated\ Take = D \times ZOI \times \#\ of\ days$$

Where:

D = average species density (per km^2); and
ZOI = maximum daily ensonified area to relevant thresholds.

TABLE 10—NUMBERS OF INCIDENTAL TAKES OF MARINE MAMMALS AUTHORIZED AND AUTHORIZED TAKES AS A PERCENTAGE OF POPULATION

Species	Calculated takes by Level B harassment [e]	Takes proposed for Level B harassment to be authorized [f]	Total	
			Authorized takes (Level B harassment) [g]	Authorized takes (Level B harassment) as a percentage of population/stock [a g]
North Atlantic right whale	17	17	17	4.62
Humpback whale	4	[c] 8	8	0.57
Fin whale	5	5	5	0.07
Sei whale	2	2	2	0.03
Minke whale	2	2	2	0.01
Sperm whale	1	1	1	0.03
Long-finned pilot whale	20	20	20	0.05
Bottlenose dolphin (W.N. Atlantic Coastal Migratory)	385	385	385	5.80
Bottlenose dolphin (W.N. Atlantic Offshore)	1,175	1,175	1,175	1.87
Common dolphin (short-beaked)	406	[b] 560	560	0.32
Atlantic white-sided dolphin	17	17	17	0.02
Atlantic spotted dolphin	50	[d] 100	100	0.25
Risso's dolphin	30	30	30	0.08
Harbor porpoise	282	282	282	0.30
Harbor seal	426	426	426	0.56
Gray seal	426	426	426	1.56

[a] Calculated percentages of population/stock were based on the population estimates (Nest) found in the NMFS's draft 2021 U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment on NMFS's website (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*).

[b] Based on information obtained from the monitoring report provided to NMFS after the completion of the 2020 survey, as well as information provided by Atlantic Shores (P. Phifer, personal communication, October 29, 2021), NMFS had proposed to increase the number of authorized takes (by Level B harassment only) for common dolphins.

[c] Based on recent data from King *et al.* (2021) where humpback whales were the most commonly sighted species in the New York Bight, NMFS had proposed to increase the take of humpback whales by assuming that Atlantic Shores' four modeled exposures would be of groups rather than individuals, and therefore multiplied by an average group size of two to yield eight.

[d] Based on information obtained from the monitoring report provided to NMFS after the completion of the 2020 survey, as well as information provided by Atlantic Shores (P. Phifer, personal communication, October 29, 2021), NMFS had proposed to increase the number of authorized takes (by Level B harassment only) for Atlantic spotted dolphins.

[e] These values were originally proposed by Atlantic Shores.

[f] These values were proposed by NMFS.

[g] These values have been authorized by NMFS.

The original take numbers calculated and requested by Atlantic Shores, the proposed take numbers from NMFS, and the authorized take numbers are shown in Table 10. As noted within Atlantic Shores' IHA application and discussed within the renewal IHA application (see Atlantic Shores Offshore Wind, 2021), Atlantic Shores made an adjustment for Risso's dolphins, common dolphins, and long-finned pilot whales based on typical pod and group sizes, which

yielded the values described above. NMFS agrees with this approach for these three species, as described in the IHA applications.

In the proposed notice (87 FR 4200; January 27, 2022), NMFS proposed an adjustment for three cetacean species: Humpback whales, common dolphins, and Atlantic spotted dolphins. Below we describe our authorized take numbers based on these adjustments.

Estimated takes of common dolphins were increased from the density-based estimate based on information provided by Atlantic Shores (P. Phifer, personal communication, October 29, 2021) and sightings described in the 2020 monitoring report. Based on these previous observations, exposures of common dolphins above the 160-dB harassment threshold were estimated at 1.55 per day. Assuming that this same exposure rate continues for the presently planned activity yields the estimate provided in Table 10.

Based on recent information from King *et al.* (2021) that demonstrated that the humpback whale is commonly sighted along the New York Bight area, NMFS determined that the humpback whale take request may be too low given the occurrence of animals near the survey area. Because of this, NMFS proposes to double the requested take to account for underestimates to the actual occurrence of this species within the density data.

Previously, 100 takes of Atlantic spotted dolphins, by Level B harassment, were authorized to Atlantic Shores during their 2020 IHA. Based on a lack of sightings in the 2020 field season per the submitted monitoring report, Atlantic Shores had requested and been authorized half of these takes (50 Level B harassment) during their 2021 field season for their renewal IHA. However, based on information provided by Atlantic Shores (P. Phifer, personal communication, October 29, 2021) as the monitoring report for the 2021 field season is not yet available, NMFS has increased the take previously requested by Atlantic Shores from 50 to 100 to account for the numerous sightings of Atlantic spotted dolphins that had already occurred early into Atlantic Shores' 2021 field season (17 takes out of 50 authorized for the renewal IHA).

As described above, Roberts *et al.* (2018) produced density models for all seals and did not differentiate by seal species. The take calculation methodology as described above resulted in an estimate of 852 total seal takes for both species. Based on this estimate, Atlantic Shores has requested 852 takes total for pinnipeds (426 each species), based on the use of the same density for both species as they are known to overlap in habitat use, foraging, and spatial scale. Furthermore, as the density estimates were not split by species in Roberts *et al.* (2016b, 2017, 2018) this approach assumes that the likelihood of either species occurring during the survey is equal. We think this is a reasonable approach and therefore propose to authorize the requested amount of take, as shown in Table 10.

Worth noting is the authorized take of NARWs, which stems from an increase in the density of NARWs at the survey site. Atlantic Shores used information from Roberts *et al.* (2020) that demonstrated that the density of NARWs has increased by approximately 40 percent in some portions of the survey area compared to the 2020 IHA (see Table 11), which justifies the total take number presented above in Table 10. While past monitoring reports (see the 2020 report on NMFS' website) have reported no observations of NARWs during the 2020 surveys, NMFS agrees with the approach taken by Atlantic Shores as using the best available science to be conservative and authorizes 17 takes by Level B harassment only of NARWs during the surveys.

TABLE 11—CHANGES IN NORTH ATLANTIC RIGHT WHALE DENSITIES IN THE SURVEY SITES FROM THE 2020 IHA TO THE 2022 IHA PER DATA FROM ROBERTS ET AL. (2020)

	Winter		Spring		Summer		Fall	
	2020 IHA	2022 IHA	2020 IHA	2022 IHA	2020 IHA	2022 IHA	2020 IHA	2022 IHA
Lease Area	0.087	0.499	0.060	0.426	0.008	0.002	0.006	0.009
Northern ECR	0.068	0.182	0.056	0.149	0.008	0.001	0.006	0.011
Southern ECR	0.073	0.179	0.055	0.097	0.007	0.000	0.006	0.005

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, as well as subsistence uses where applicable, we carefully consider 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, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation Measures

NMFS requires the following mitigation measures be implemented during Atlantic Shores' marine site characterization surveys. Additionally, Atlantic Shores must abide by all the marine mammal relevant conditions in

the NOAA Fisheries Greater Atlantic Regional Office (GARFO) programmatic consultation (specifically Project Design Criteria (PDC) 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (NOAA GARFO, 2021; *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*), pursuant to Section 7 of the Endangered Species Act.

Marine Mammal Exclusion Zones and Level B Harassment Zones

Marine mammal Exclusion Zones will be established around the HRG survey equipment and monitored by PSOs. These PSOs will be NMFS-approved visual PSOs. Based upon the acoustic source in use (impulsive: Sparkers; non-impulsive: Non-parametric sub-bottom profilers), a minimum of one PSO must be on duty, per source vessel, during daylight hours and two PSOs must be on duty, per source vessel, during nighttime hours. These PSO will monitor Exclusion Zones based upon the radial distance from the acoustic source rather than being based around the vessel itself. The Exclusion Zone distances are as follows:

- A 500 m Exclusion Zone for NARWs during use of specified acoustic sources (impulsive: Sparkers; non-impulsive: Non-parametric sub-bottom profilers).
- A 100 m Exclusion Zone for all other marine mammals (excluding NARWs) during use of specified acoustic sources (except as specified below). All visual monitoring must begin no less than 30 minutes prior to the initiation of the specified acoustic source and must continue until 30 minutes after use of specified acoustic sources ceases.

If a marine mammal were detected approaching or entering the Exclusion Zones during the HRG survey, the vessel operator will adhere to the shutdown procedures described below to minimize noise impacts on the animals. These stated requirements will be included in the site-specific training to be provided to the survey team.

Ramp-Up of Survey Equipment and Pre-Clearance of the Exclusion Zones

When technically feasible, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or restart of survey activities. A ramp-up will begin with the powering up of the smallest acoustic HRG equipment at its lowest practical power output appropriate for the survey. The ramp-up procedure will be used in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment operation at full power. When technically feasible, the power will then be gradually turned up and other acoustic sources would be added. All ramp-ups shall be scheduled so as to minimize the time spent with the source being activated.

Ramp-up activities will be delayed if a marine mammal(s) enters its respective Exclusion Zone. Ramp-up will continue if the animal has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and seals; 30 minutes for all other species).

Atlantic Shores will implement a 30 minute pre-clearance period of the Exclusion Zones prior to the initiation of ramp-up of HRG equipment. The operator must notify a designated PSO of the planned start of ramp-up where the notification time should not be less than 60 minutes prior to the planned ramp-up. This will allow the PSOs to monitor the Exclusion Zones for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Atlantic Shores must receive confirmation from the PSO that the Exclusion Zone is clear prior to proceeding. During this 30 minute pre-start clearance period, the entire applicable Exclusion Zones must be visible. The exception to this would be in situations where ramp-up may occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up. Acoustic source activation may only occur at night where operational planning cannot reasonably avoid such circumstances.

During this period, the Exclusion Zone will be monitored by the PSOs, using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective Exclusion Zone. If a marine mammal is observed within an Exclusion Zone during the pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective Exclusion Zone or until an additional time period has elapsed with no further sighting (*i.e.,* 15 minutes for small odontocetes and pinnipeds; 30 minutes for all other species). If a marine mammal enters the Exclusion Zone during ramp-up, ramp-up activities must cease and the source must be shut down. 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 zones.

The pre-clearance zones will be:

- 500 m for all ESA-listed species (North Atlantic right, sei, fin, sperm whales); and
- 100 m for all other marine mammals.

If any marine mammal species that are listed under the ESA are observed within the clearance zones, the 30 minute clock must be paused. If the PSO confirms the animal has exited the zone and headed away from the survey vessel, the 30 minute clock that was paused may resume. The pre-clearance clock will reset to 30 minutes if the animal dives or visual contact is otherwise lost.

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 Exclusion Zone. For any longer shutdown, pre-start clearance observation and ramp-up are required.

Activation of survey equipment through ramp-up procedures may not occur when visual detection of marine mammals within the pre-clearance zone is not expected to be effective (*e.g.,* during inclement conditions such as heavy rain or fog).

The acoustic source(s) must be deactivated when not acquiring data or preparing to acquire data, except as necessary for testing. Unnecessary use of the acoustic source shall be avoided.

Shutdown Procedures

An immediate shutdown of the impulsive HRG survey equipment (Table 7) will be required if a marine mammal is sighted entering or within its respective Exclusion Zone(s). Any PSO on duty has the authority to call for a shutdown of the acoustic source if a marine mammal is detected within the applicable Exclusion Zones. Any disagreement between the PSO and vessel operator should be discussed only after shutdown has occurred. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch.

The shutdown requirement is waived for small delphinids (belonging to the genera of the Family *Delpinidae: Delphinus, Lagenorhynchus, Stenella, or Tursiops*) and pinnipeds if they are visually detected within the applicable Exclusion Zones. 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 applicable Level B harassment zone, shutdown will occur. In the event of uncertainty regarding the identification of a marine mammal species (*i.e.,* such as whether the observed marine mammal belongs to *Delphinus, Lagenorhynchus, Stenella, or Tursiops* for which shutdown is waived, PSOs must use their best professional judgement in making the decision to call for a shutdown.

Specifically, if a delphinid from the specified genera or a pinniped is visually detected approaching the vessel (*i.e.,* to bow ride) or towed equipment, shutdown is not required.

Upon implementation of a shutdown, the source may be reactivated after the marine mammal has been observed exiting the applicable Exclusion Zone or following a clearance period of 15 minutes for harbor porpoises and 30 minutes for all other species where there are no further detections of the marine mammal.

Shutdown, pre-start clearance, and ramp-up procedures are not required during HRG survey operations using only non-impulsive sources (*e.g.,* parametric sub-bottom profilers) other than non-parametric sub-bottom profilers (*e.g.,* CHIRPs). Pre-clearance and ramp-up, but not shutdown, are required when using non-impulsive, non-parametric sub-bottom profilers.

Seasonal Operating Requirements

As described in the proposed Notice, a section of the survey area partially overlaps with a portion of a North Atlantic right whale SMA off the port of New York/New Jersey. This SMA is active from November 1 through April 30 of each year. All survey vessels, regardless of length, would be required to adhere to vessel speed restrictions (<10 knots) when operating within the SMA during times when the SMA is active. In addition, between watch shifts, members of the monitoring team would consult NMFS' NARW reporting systems for the presence of NARWs throughout survey operations. Members of the monitoring team would also monitor the NMFS NARW reporting systems for the establishment of Dynamic Management Areas (DMA). NMFS may also establish voluntary right whale Slow Zones any time a right whale (or whales) is acoustically detected. Atlantic Shores should be aware of this possibility and remain attentive in the event a Slow Zone is established nearby or overlapping the survey area (Table 12).

TABLE 12—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	North Atlantic right whale (*Eubalaena glacialis*).	If established by NMFS, all of Atlantic Shores' vessels will abide by the described restrictions.		N/A.
ECR North				November 1 through July 31 (Raritan Bay).
ECR South				N/A.

Note: More information on Ship Strike Reduction for the North Atlantic right whale can be found at NMFS' website: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-vessel-strikes-north-atlantic-right-whales.*

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The survey activities would occur in an area that has been identified as a biologically important area for migration for NARWs. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area and the relatively low amount of noise generated by the survey, the survey is not expected to appreciably reduce the quality of migratory habitat nor to negatively impact the migration of NARWs, thus mitigation to address the survey's occurrence in NARW migratory habitat is not warranted.

Vessel Strike Avoidance

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.

Survey vessel crewmembers responsible for navigation duties will receive site-specific training on marine mammals sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures would include the following, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- Atlantic Shores will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds and slow down, stop their vessels, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of additional 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 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 right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals. All vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of NARWs from vessel strikes, including seasonal management areas (SMAs) and dynamic management areas (DMAs) when in effect. 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 their speed to 10-knots 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

(1,640 ft) from right whales and other ESA-listed species. If an ESA-listed species is sighted within the relevant separation distance, the vessel must steer a course away at 10-knots or less until the 500 m separation distance has been established. If a whale is observed but cannot be confirmed as a species that is not ESA-listed, the vessel operator must assume that it is an ESA-listed species and take appropriate action.

- All vessels must maintain a minimum separation distance of 100 m (328 ft) from non-ESA-listed baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m (164 ft) from all other marine mammals, with an understanding that, at times, this may not be possible (*e.g.,* for animals that approach the vessel, bow-riding species).
- When marine mammal are sighted while a vessel is underway, the vessel shall 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 monitoring 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 a DMA. If NMFS should establish a DMA in the survey area during the survey, the vessels will abide by speed restrictions in the DMA.

Training

All PSOs must have completed a PSO training program and received NMFS approval to act as a PSO for geophysical surveys. Documentation of NMFS approval and most recent training certificates of individual PSOs' successful completion of a commercial PSO training course must be provided upon request. Further information can be found at *www.fisheries.noaa.gov/national/endangered-species-conservation/protected-species-observers.* In the event where third-party PSOs are not required, crew members serving as lookouts must receive training on protected species identification, vessel strike minimization procedures, how and when to communicate with the vessel captain, and reporting requirements.

Atlantic Shores shall instruct relevant vessel personnel with regard to the authority of the marine mammal monitoring team, and shall ensure that relevant vessel personnel and the marine mammal monitoring team participate in a joint onboard briefing (hereafter PSO briefing), led by the vessel operator and lead PSO, prior to beginning survey activities to ensure that responsibilities, communication procedures, marine mammal monitoring protocols, safety and operational procedures, and IHA requirements are clearly understood. This PSO briefing must be repeated when relevant new personnel (*e.g.,* PSOs, acoustic source operator) join the survey operations before their responsibilities and work commences.

Survey-specific training will be conducted for all vessel crew prior to the start of a survey and during any changes in crew such that all survey personnel are fully aware and understand the mitigation, monitoring, and reporting requirements. All vessel crew members must be briefed in the identification of protected species that may occur in the survey area and in regulations and best practices for avoiding vessel collisions. Reference materials must be available aboard all survey vessels for identification of listed species. The expectation and process for reporting of protected species sighted during surveys must be clearly communicated and posted in highly visible locations aboard all survey vessels, so that there is an expectation for reporting to the designated vessel contact (such as the lookout or the vessel captain), as well as a communication channel and process for crew members to do so. Prior to implementation with vessel crews, the training program will be provided to NMFS for review and approval. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew member understands and will comply with the necessary requirements throughout the survey activities.

Based on our evaluation of Atlantic Shores' measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means 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.

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 in the action area. Effective reporting is critical to both 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 action; 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).
- Mitigation and monitoring effectiveness.

Monitoring Measures

Atlantic Shores must use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider, must 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 mammal and mitigation requirements (including brief alerts regarding maritime hazards), and

must have successfully completed an approved PSO training course 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.

PSO names must be provided to NMFS by the operator for review and confirmation of their approval for specific roles prior to commencement of the survey. 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, 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.

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).

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 coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars or night-vision equipment and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period.

Any observations of marine mammal by crew members aboard any vessel associated with the survey shall be relayed to the PSO team.

Atlantic Shores 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 millimeter (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-part PSO provider, or the operator, but Atlantic Shores is responsible for ensuring PSOs have the proper equipment required to perform the duties specified in the IHA.

During good conditions (*e.g.,* daylight hours; Beaufort sea state 3 or less), PSOs shall conduct observations when the specified acoustic sources are not operating for comparison of sighting rates and behavior with and without use of the specified acoustic sources and between acquisition periods, to the maximum extent practicable.

The PSOs will be responsible for monitoring the waters surrounding each survey vessel to the farthest extent permitted by sighting conditions, including Exclusion Zones, during all HRG survey operations. PSOs will visually monitor and identify marine mammals, including those approaching or entering the established Exclusion 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.

Atlantic Shores plans to utilize six PSOs across each vessel to account for shift changes, with a total of 18 during these surveys (six PSOs per vessel × three vessels). At a minimum, during all HRG survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), one PSO must be on duty during daylight operations on each survey vessel, conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and two PSOs will be on watch during nighttime operations. The PSO(s) would ensure 360° visual coverage around the vessel from the most appropriate observation posts and would conduct visual observations using binoculars and/or night vision goggles and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hr period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all nearby survey vessels.

PSOs must be equipped with binoculars and have the ability to estimate distance and bearing to detect

marine mammals, particularly in proximity to Exclusion 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, 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 would 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. Any observations of marine mammals by crew members aboard any 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 *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).

Reporting Measures

Atlantic Shores shall submit a draft comprehensive report 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 ESRI shapefile format and include the 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 submitted in interim monthly reports (if required) as well as additional data collected. A final report must be submitted within 30 days following resolution of any comments on the draft report. All draft and final marine mammal and acoustic monitoring reports must be submitted to *PR.ITP.MonitoringReports@noaa.gov* and *ITP.Potlock@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 and other vessels associated with survey), vessel size and type, maximum speed capability of vessel;
2. Dates of departures and returns to port with port name;
3. The lease number;
4. PSO names and affiliations;
5. Date and participants of PSO briefings;
6. Visual monitoring equipment used;
7. PSO location on vessel and height of observation location above water surface;
8. Dates and times (Greenwich Mean Time) of survey on/off effort and times corresponding with PSO on/off effort;
9. Vessel location (decimal degrees) when survey effort begins and ends and vessel location at beginning and end of visual PSO duty shifts;
10. Vessel location at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;
11. Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any change;
12. Water depth (if obtainable from data collection software);
13. 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;
14. 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
15. 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.).

Upon visual observation of any marine mammal, the following information must be recorded:

1. Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
2. Vessel/survey activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
3. PSO who sighted the animal;
4. Time of sighting;
5. Initial detection method;
6. Sightings cue;
7. Vessel location at time of sighting (decimal degrees);
8. Direction of vessel's travel (compass direction);
9. Speed of the vessel(s) from which the observation was made;
10. 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;
11. Species reliability (an indicator of confidence in identification);
12. Estimated distance to the animal and method of estimating distance;
13. Estimated number of animals (high/low/best);
14. Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
15. 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);
16. 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);
17. 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;
18. Equipment operating during sighting;

19. Animal's closest point of approach and/or closest distance from the center point of the acoustic source; and

20. 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 any survey vessels, during surveys or during vessel transit, Atlantic Shores must report the sighting information to the NMFS North Atlantic Right Whale Sighting Advisory System (866–755–6622) within two 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 (*https://www.whalealert.org*).

In the event that Atlantic Shores personnel discover an injured or dead marine mammal, regardless of the cause of injury or death. In the event that personnel involved in the survey activities discover an injured or dead marine mammal, Atlantic Shores must report the incident to NMFS as soon as feasible by phone (866–755–6622) and by email (*nmfs.gar.stranding@noaa.gov* and *PR.ITP.MonitoringReports@noaa.gov*) as soon as feasible. 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 unanticipated event of a ship strike of a marine mammal by any vessel involved in the activities covered by the IHA, Atlantic Shores must report the incident to NMFS by phone (866–755–6622) and by email (*nmfs.gar.stranding@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 responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), 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's 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 environmental 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, our analysis applies to all the species listed in Table 3, given that NMFS expects the anticipated effects of the survey activities to be similar in nature. Where there are meaningful differences between species or stocks—as is the case of the NARW—they are included as separate subsections below. 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 will be authorized.

As discussed in the Potential Effects section of the proposed **Federal Register** Notice, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that all potential takes would be in the form of short-term Level B behavioral 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). Even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. As described above, Level A harassment is not expected to occur given the nature of the operations, the estimated size of the Level A harassment zones, and the required Exclusion Zone for certain activities. Because of this, no Level A harassment has been authorized.

In addition to being temporary, the maximum expected harassment zone around a survey vessel is 141 m. Although this distance is assumed for all survey activity in estimating take numbers authorized and evaluated here, in reality, the Applied Acoustics Dura-Spark 240 would likely not be used across the entire 24-hour period and across all 360 days. As noted in Table 7, the other acoustic sources Atlantic Shores has included in their application produce Level B harassment zones below 60 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 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 support human interactions, specifically vessel strikes and entanglements, as the cause of death for the majority of right whales. As noted previously, Atlantic Shores' survey area overlaps a migratory corridor BIA for NARWs. We note that the survey area is relatively small compared with the migratory BIA area (approximately 5,868 km^2 and the NARW migratory BIA is 269,448 km^2) and, importantly, that the effects of the activity are sufficiently low-level as to not meaningfully impact important behavior, including migratory behavior. Due to the fact that the described survey activities are temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the BIA, right whale migration is not expected to be impacted by the described activities. Further, given the relatively small size of the ensonified area (141 m), 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 Atlantic Shores' survey activities. The 500 m Exclusion Zone for right whales 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 potential for behavioral harassment of this species.

As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types planned for use. The authorized levels of Level B harassment takes of NARW are not expected to exacerbate or compound upon the ongoing UME. The limited NARW Level B harassment takes to be authorized are expected to be of a short duration, and given the number of estimated takes, repeated exposures of the same individual are not expected. Further, given the relatively small size of the ensonified area during Atlantic Shores' survey activities, it is unlikely that NARW prey availability would be adversely affected. Accordingly, NMFS does not anticipate NARWs takes that would result from Atlantic Shores' survey 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 Atlantic Shores' 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 in July 2018 and 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, although additional testing to identify other factors that may be involved in this UME are underway. The UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (350) is well below PBR (2,006) (Hayes *et al.,* 2020). 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.,* 2020).

The required mitigation measures are expected to reduce the number and/or severity of authorized takes for all species listed in Tables 3 and 10, 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 throughout the survey area before HRG survey equipment reaches full energy, thus preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment. As discussed previously, take by Level A harassment (injury) is considered unlikely, even absent mitigation, based on the characteristics of the signals produced by the acoustic sources planned for use. Implementation of required mitigation would further reduce this potential. Therefore, NMFS is not authorizing any Level A harassment.

NMFS expects that takes would be in the form of short-term Level B behavioral 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.

Biologically Important Areas for Other Species

As previously discussed, impacts from the survey are expected to be localized to the specific area of activity and only during periods of time where Atlantic Shores' acoustic sources are active. While areas of biological importance to fin whales, humpback whales, and harbor seals can be found off the coast of New Jersey and New York, NMFS does not expect these activities to affect these areas. This is due to the combination of the mitigation and monitoring measures being required of Atlantic Shores as well as the location of these biologically important areas. All of these important areas are found outside of the range of this survey area, as is the case with fin whales and

humpback whales (BIAs found further north), and, therefore, not expected to be impacted by Atlantic Shores' survey activities.

Three major haul-out sites exist for harbor seals within ECR North along New Jersey, including at Great Bay, Sand Hook, and Barnegat Inlet (CWFNJ, 2015). As hauled out seals would be out of the water, no in-water effects are expected.

Determinations

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated nor will be authorized;
- No Level A harassment (PTS) is anticipated, even in the absence of mitigation measures, or will be authorized;
- Foraging success is not likely to be 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 survey area during the planned survey to avoid exposure to sounds from the activity;
- Take is anticipated to be by Level B behavioral harassment only consisting of brief startling reactions and/or temporary avoidance of the survey area;
- While the survey area is within areas noted as a migratory BIA for NARWs, the activities would occur in such a comparatively small area such that any avoidance of the survey area due to activities would not affect migration; and
- The described mitigation measures, including effective 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 finds that the total marine mammal take from the described survey activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take 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 authorizes incidental take (by Level B harassment only) of 15 marine mammal species (with 16 managed stocks). The total amount of takes authorized relative to the best available population abundance is less than 6 percent for all stocks (Table 10). Therefore, NMFS finds that small numbers of marine mammals may be taken relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the described activities (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will 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 Office of Protected Resources (OPR) consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS is authorizing the incidental 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 GARFO's 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). The consultation concluded that NMFS' issuance of incidental take authorization related to these activities are not likely to adversely affect ESA-listed marine mammals.

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 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 determined that the issuance of the final IHA qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS has issued an IHA to Atlantic Shores for conducting site characterization surveys off New York and New Jersey from April 20, 2022 through April 19, 2023, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The final IHA and Atlantic Shores' IHA application can be found on NMFS' website at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-atlantic-shores-offshore-wind-llc-marine-site-0.*

Dated: April 18, 2022.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–08653 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Programmatic Environmental Impact Statement for the NMFS Saltonstall-Kennedy Research and Development Program

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

ACTION: Notice of availability; announcement of public meetings; request for written comments.

SUMMARY: NOAA announces the availability of its Draft Programmatic Environmental Impact Statement (PEIS) which analyzes the potential environmental impacts of the implementation of projects that foster the promotion, marketing, research, and development of U.S. Fisheries and their associated fishing sectors, as consistent with NOAA's Saltonstall-Kennedy Research and Development Program (S–K Program). The focus of this action is on activities and projects under the S–K Program, which interfaces with numerous programs within NOAA, and it is NOAA's intention that this PEIS may also cover those activities and projects implemented by other NOAA programs and offices that are consistent with the scope of the S–K Program. This notice of availability (NOA) of the Draft PEIS invites interested parties to provide comments on the proposed project, its potential to affect the human environment, and means for avoiding, minimizing, or mitigating those effects.

DATES: Written comments on this Draft PEIS must be received no later than June 6, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0045, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0045 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

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

Comments will also be accepted at public meetings during the Draft PEIS comment period. The webinar and telephone information for the public meetings is provided below in the *Draft PEIS Process* section.

FOR FURTHER INFORMATION CONTACT: Cliff Cosgrove, Saltonstall-Kennedy Program Manager, telephone: (301–427–8736); *nmfs.sk.peis@noaa.gov;* or visit the S–K Program website: *https://www.fisheries.noaa.gov/content/saltonstall-kennedy-research-and-development-program.*

SUPPLEMENTARY INFORMATION:

Project Scope

The purpose of this PEIS is to identify and evaluate the general impacts, issues and concerns related to the implementation of the types of projects that are consistent with the scope of the S–K Program. The S–K Program funds projects that address the needs of fishing communities, optimize economic benefits by building and maintaining sustainable fisheries (where the term ''fisheries'' includes commercial wild capture, recreational fishing, cultural and subsistence fishing, and marine aquaculture), and increase other opportunities to keep working waterfronts viable. The PEIS will be used to support site- and project-specific NEPA reviews, as necessary. The PEIS addresses all of the priorities, and their associated project types, that the S–K Program has funded since 2010, which cover the range of priorities and project types that fall under the S–K Program. The affected environment associated with the proposed action includes all marine, estuarine, and coastal habitats in the United States and territories. It also includes freshwater interior habitats that influence or affect rivers, streams, and creeks affecting marine or estuarine waters, or that support migratory fish populations. It may also include adjacent or continuous habitats in Canada or Mexico that support living coastal and marine resources under NOAA trusteeship.

To ensure consideration of input from interested parties in each region, NOAA will conduct three public meetings for the Draft PEIS. Each meeting will be focused on a region or combination of regions based on time zone proximity. More information about each meeting, including meeting dates and times, can be found in the *Draft PEIS Process* section below.

Background

In 1954, the Saltonstall-Kennedy Act (15 U.S.C. 713c–3) was passed to address the needs of U.S. fisheries and their related fishing sectors, and thereby established the S–K Program. The Saltonstall-Kennedy Act states that The Secretary shall make grants to assist persons in carrying out research and development projects addressed to any aspect of United States fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures.

The S–K Program provides funding to projects that benefit fishing communities through the promotion, marketing, research, and development of U.S. fisheries and their associated fishing sectors. Since its inception, grants have been provided to fishers, individuals, private businesses, fishing organizations, universities, states, research institutes, non-governmental organizations, and others.

The S–K Program is composed of a competitive grant program and a national program. Grants and cooperative agreements are provided under both programs and can occur in any of NMFS' five fisheries regions. The national program is designed to fund needed fishery industry projects that are not addressed through the competitive grants program. Funding for the S–K Program is determined through annual congressional appropriations. Historically, the S–K Program has had a diverse set of priorities, selecting between two and seven projects each year for funding. While the primary priority has been projects that meet the purpose of promotion, development, and marketing (PDM) of the U.S. fisheries and their associated fishing sectors, and NMFS anticipates that will continue to be the primary priority, priorities can change annually and additional priorities can be chosen.

For more information about the S–K Program, please use the link provided in the **FOR FURTHER INFORMATION CONTACT** section above.

Proposed Action, Purpose, and Need

The proposed Federal action is to fund projects that are consistent with the scope of the S–K Program. The purpose of the proposed action is threefold: (1) Address the needs of fishing communities, consistent with NOAA's mandate through the Saltonstall-Kennedy Act; (2) ensure that NOAA continues to meet the intent and requirements of the Saltonstall-Kennedy Act; and (3) assist NOAA in meeting its

mission, ''To understand and predict changes in climate, weather, oceans, and coasts, to share that knowledge and information with others, and to conserve and manage coastal and marine ecosystems and resources.'' The Proposed Action is needed to implement the S–K Act and funding program to build and maintain sustainable fisheries, optimize economic benefits, and increase other opportunities to keep working waterfronts viable.

Types of projects funded by the S–K Program include, but are not limited to, (1) seafood promotion and marketing; (2) research and monitoring; (3) gear testing, bycatch reduction, and processing studies; (4) aquaculture; (5) socioeconomic research; and (6) outreach, education, and planning.

Alternatives

The Draft PEIS considers two alternatives: (1) A No Action Alternative, and (2) the proposed action, which NOAA is referring to as the Promotion, Marketing, Research and Development Alternative (Preferred Alternative). Under the No Action Alternative, the S–K Program would not fund projects that address the needs of fishing communities, optimize economic benefits by building and maintaining sustainable fisheries, and increase other opportunities to keep working waterfronts viable. The No Action Alternative serves as a baseline against which the impacts of the Preferred Alternative are compared. Implementation of the Preferred Alternative would allow for the funding of actions through federal financial assistance for all possible types of projects that meet the intent of the Saltonstall-Kennedy Act and the needs of U.S. fishing communities, consistent with the scope of the S–K Program. This alternative would provide the S–K Program with flexibility in choosing priorities each year while also considering the funding environment.

Draft PEIS Process

This notice initiates a public comment period for the Draft PEIS. Please review the information in this notice and additional information about the S–K Program, located on the NOAA S–K Program website (see the **FOR FURTHER INFORMATION CONTACT** section above). NOAA is particularly interested in receiving comments regarding biological, cultural, or ecological issues that the analysis should address. We also encourage comments that assist us in further delineating the proposed project, its potential to affect the human environment, means for avoiding, minimizing, or mitigating those effects, and other issues of public concern. To promote informed decision-making, we especially encourage commenters to submit any scientific data, studies, or research that you feel is relevant to the analysis.

To facilitate the public and agency involvement in the PEIS process, NOAA will hold three virtual public meetings during the 45-day Draft PEIS public comment period. The meetings will be virtual in format. The meetings will solicit input from the public and interested public agencies regarding the environmental impacts analyzed in the Draft PEIS. Three virtual public meetings (in webinar format only) will be held in each of three regions, as follows:

- Eastern and Gulf of Mexico Region (includes Atlantic States, Gulf of Mexico States, U.S. Virgin Islands, and Puerto Rico)—May 3, 2022
  - 12:00 p.m.–3:00 p.m. Central Daylight Time (CDT)
  - 1:00 p.m.– 4:00 p.m. Eastern Daylight Time (EDT)
- Western Region (includes Pacific States, Idaho, Alaska)—May 4, 2022
  - 10:00 a.m.–1:00 p.m. Pacific Daylight Time (PDT)
  - 9:00 a.m.–12:00 p.m. Alaska Daylight Time (AKDT)
- Western Pacific Region (includes Hawaii and Pacific Territories)—May 5, 2022
  - May 5, 2022, 1:00 p.m.–4:00 p.m. Hawaii-Aleutian Standard Time (HST)
  - May 6, 2022, 9:00 a.m.–12:00 p.m. Chamorro Standard Time (CHST)

Use the webinar links and dial-in information below to join each of the public scoping meetings:

- Eastern and Gulf of Mexico Region:
  - *Webinar Link: https://kearnsandwest.webex.com/kearnsandwest/j.php?MTID=ma03971dfae8c6b633729b0999b548449*
  - Access Code: 2498 400 6694
  - Dial-in Information: 1–844–621–3956 (US Toll Free) +1–415–655–0001 (US Toll)
- Western Region:
  - *Webinar Link: https://kearnsandwest.webex.com/kearnsandwest/j.php?MTID=m27121be3b23b64dd86e686176c472cc2*
  - *Access Code:* 2496 674 8493
  - *Dial-in Information:* 1–844–621–3956 (US Toll Free) +1–415–655–0001 (US Toll)
- Western Pacific Region:
  - *Webinar Link: https://kearnsandwest.webex.com/kearnsandwest/j.php?MTID=m96385ca30659a7d4df14ea3d29379680*
  - *Access Code:* 2487 332 4826
  - *Dial-in Information:* 1–844–621–3956 (US Toll Free) +1–415–655–0001 (US Toll)

Participants are encouraged to download the Webex Meetings app ahead of the meetings, using this link: *https://www.webex.com/downloads.html.* Then use the meeting link above to join a public meeting at the appropriate time. You may also participate by phone toll-free by calling 1–844–621–3956 (US Toll Free) or +1–415–655–0001 (US Toll), then entering the Access Code above when prompted.

After the comment period closes, NOAA will review and consider all comments received during the comment period and any other relevant information when developing the Final PEIS. Upon completion of the Final PEIS, a document announcing its availability will be published in the **Federal Register**.

Authority: This PEIS is being prepared under the authority of, and in accordance with, the requirements of NEPA, implementing regulations published by the Council on Environmental Quality (40 CFR 1500–1508), other applicable regulations, and NOAA's policies and procedures for compliance with those regulations.

Dated: April 18, 2022.

Daniel A. Namur,

Director of the NMFS Financial Assistance Division, National Marine Fisheries Service.

[FR Doc. 2022–08629 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB944]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Citizen Science Operations Committee via webinar May 12, 2022.

DATES: The meeting will be held on Thursday, May 12, 2022, from 1 p.m. until 4 p.m.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar. There will be an opportunity for public comment at the beginning of the meeting.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julia Byrd, Citizen Science Program Manager, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Citizen Science Operations Committee serves as advisors to the Council's Citizen Science Program. Committee members include representatives from the Council's Citizen Science Advisory Panel, NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, and the Council's Science and Statistical Committee. Their responsibilities include developing programmatic recommendations, reviewing policies, providing program direction/multi-partner support, identifying citizen science research needs, and providing general advice.

Agenda items include: Review of the Council's Citizen Science Program initial evaluation plan, including discussing interview findings and reviewing draft survey questions; the citizen science research priority process; a Citizen Science Program Update; and other business.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 19, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08610 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB962

Marine Fisheries Advisory Committee Meeting

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will discuss and provide advice on issues outlined under **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be held May 10 and 11, 2022, from 8:30 a.m. to 5 p.m., and May 12, from 8:30 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Sheraton Old San Juan Hotel, 100 Brumbaugh Street, San Juan, Puerto Rico 00901; 787–721–5100.

FOR FURTHER INFORMATION CONTACT: Heidi Lovett, MAFAC Assistant Director; 301–427–8034; email: *Heidi.Lovett@noaa.gov.*

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given of a meeting of MAFAC. The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The complete charter and summaries of prior meetings are located online at *https://www.nmfs.noaa.gov/ocs/mafac/.*

Matters To Be Considered

This meeting time and agenda are subject to change.

The meeting is convened to hear presentations and updates and to discuss policies and guidance on the following topics: NOAA and NMFS priorities; national seafood strategy; aquaculture development; the NOAA Climate, Ecosystems, and Fisheries Initiative; offshore wind development and survey mitigation; and budget outlook. MAFAC will receive a report from its Recreational Electronic Reporting Task Force and an overview of outcomes from the recent National Saltwater Recreational Fisheries Summit. MAFAC will discuss various administrative and organizational matters, and meetings of subcommittees and working groups will be convened.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heidi Lovett; 301–427–8034 by April 29, 2022.

Dated: April 18, 2022.

Jennifer Lukens,

Director for the Office of Policy, National Marine Fisheries Service.

[FR Doc. 2022–08559 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the National Technical Information Service (NTIS) Advisory Board (the Advisory Board).

DATES: The Advisory Board will meet on Monday, June 6, 2022 from 1:00 p.m. to approximately 4:30 p.m., Eastern Time, via teleconference.

ADDRESSES: The Advisory Board meeting will be via teleconference. Please note attendance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shaw, (703) 605–6136, *eshaw@ntis.gov* or Steven Holland at *sholland@ntis.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Board is established by Section 3704b(c) of Title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The Advisory Board reviews and makes recommendations to improve NTIS programs, operations, and general policies in support of NTIS' mission to advance Federal data priorities, promote economic growth, and enable operational excellence by providing innovative data services to Federal agencies through joint venture partnerships with the private sector.

The meeting will focus on a review of the progress NTIS has made in implementing its data mission and strategic direction. A final agenda and summary of the proceedings will be

posted on the NTIS website as soon as they are available (*https://www.ntis.gov/about/advisorybd/index.xhtml*).

The teleconference will be via controlled access. Members of the public interested in attending via teleconference or speaking are requested to contact Ms. Shaw at the contact information listed in the **FOR FURTHER INFORMATION CONTACT** section above not later than Wednesday, June 1, 2022. If there are sufficient expressions of interest, up to one-half hour will be reserved for public oral comments during the session. Speakers will be selected on a first-come, first-served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend are invited to submit written statements by emailing Ms. Shaw at the email address provided in the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: April 19, 2022.

Gregory Capella,

Director.

[FR Doc. 2022–08631 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–04–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 220418–0099]

RIN 0660–XC052

Developing a Report on Competition in the Mobile App Ecosystem

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice; request for comment.

SUMMARY: Restoring competition in the American technology sector is a critical priority of the President's Executive order on Promoting Competition in the American Economy. On behalf of the U.S. Department of Commerce, the National Telecommunications and Information Administration (NTIA) is requesting comments on competition in the mobile application ecosystem. The data gathered through this process will be used to inform the Biden-Harris Administration's competition agenda, including, but not limited to, the Department of Commerce's work developing a report to submit to the Chair of the White House Competition Council regarding the mobile application ecosystem.

DATES: Written comments must be received on or before 11:59 p.m. Eastern Time on May 23, 2022.

ADDRESSES: All electronic public comments on this action, identified by docket number NTIA–2022–0001 may be submitted through the Federal e-Rulemaking Portal at *www.regulations.gov*. The docket established for this rulemaking can be found at *www.regulations.gov,* NTIA–2022–0001. Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. Responders should include a page number on each page of their submissions. Please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. All comments received are a part of the public record and will generally be posted to *Regulations.gov* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. For more detailed instructions about submitting comments, see the ''Instructions for Commenters'' section at the end of this Notice.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this Notice to *app-rfc@ntia.gov,* indicating ''Notice and Request for comment'' in the subject line, or if by mail, addressed to Ruth Yodaiken, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; telephone: (202) 482–4067. Please direct media inquiries to NTIA's Office of Public Affairs, telephone: (202) 482–7002; email: *press@ntia.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

On July 9, 2021, the President signed Executive Order 14036 on Promoting Competition in the American Economy (E.O.).[1] As the E.O. explains, ''[t]he American information technology sector has long been an engine of innovation and growth, but today a small number of dominant internet platforms use their power to exclude market entrants, to extract monopoly profits, and to gather intimate personal information that they can exploit for their own advantage. Too many small businesses across the economy depend on those platforms and a few online marketplaces for their survival.''

The E.O. includes numerous initiatives to address the problem of dominant tech platforms undermining competition and reducing innovation. Included among them is a directive to the Secretary of Commerce to, in consultation with the Attorney General and the Chair of the Federal Trade Commission (FTC), conduct a study—including by conducting an open and transparent stakeholder consultation process—of the mobile application (app) ecosystem, and submit a report to the Chair of the White House Competition Council, regarding findings and recommendations for improving competition, reducing barriers to entry, and maximizing user benefit with respect to the ecosystem.[2]

By one account, the app economy was valued at $1.7 trillion in 2020, and over 300,000 U.S. companies work in this sector, employing more than 5.9 million Americans.[3] The two main app stores are operated by companies with headquarters in the United States. Global consumer spending in this ecosystem is also growing rapidly, estimated by some as nearly doubling from 2016 to 2020, to reach $120 billion.[4] Entire new sectors of industries have been spawned as a result of app innovation, such as ride sharing, or have experienced technical advancement, such as smart home appliances. The app economy is becoming a fundamental way that Americans interact with their environment. Thus, it is critical that this market be robust, open, innovative, and secure—and without barriers to entry and growth.

On behalf of the Department, and in furtherance of this requirement, NTIA is requesting comments from the public on competition in the ecosystem in which mobile apps exist. The goal is to support the Administration's efforts to promote competition in the tech sector and to inform NTIA's analysis of ways to support healthy competition in the market for mobile apps, in particular.

NTIA is the executive branch agency that is principally responsible by law for advising the President on telecommunications and information policy. NTIA studies and develops policy advice for the Administration related to communications and the

[1] E.O. 14036, 86 FR 36987, Section (r) (iii) (July 9, 2021), *https://www.govinfo.gov/content/pkg/FR-2021-07-14/pdf/2021-15069.pdf#page=1*.

[2] Software applications are often referred to as ''apps,'' and the term is used throughout to refer to mobile apps, either native or web-based.

[3] State of the U.S. App Economy: 2020. ACT: The App Association (Jan. 31, 2021) (ACT Report 2020), *https://actonline.org/wp-content/uploads/2020-App-economy-Report.pdf*.

[4] ACT Report 2020.

internet,[5] including to promote the efficient and effective use of telecommunications and information resources.[6] In that role, NTIA regularly works on national policies on the communications infrastructure.[7] Additionally, the Department more broadly is charged with promoting job creation and economic growth.

This study is aimed at examining unique aspects of competition involving apps on mobile phones and tablets.[8] In doing so, we recognize that the general mobile ecosystem is comprised of a number of distinct types of entities and interrelated markets. Mobile service providers play a role in a range of relevant aspects, including broadband service and determining which apps are pre-loaded or set as defaults. At the same time, functionality and app distribution are also dependent upon operating systems and app stores, which function as sub-ecosystems.[9] For this study, we are seeking to look beyond the general to examine particular environments in which different types of apps and associated businesses operate. For example, there might be different opportunities and barriers [10] that distinguish some types of apps, such as those used for medical purposes, payments, streaming, social-networks, messaging, or apps that connect to other items by virtual or physical connections (*e.g.,* to tracking or Internet-of-Things devices). Other app ecosystems that exist or extend beyond mobile, such as those for gaming consoles and personal computers, might be relevant to our review, but only to the extent that analysis of them offers clear facts for comparison.

The Executive Order specifically requires consultation on the NTIA study with the Department of Justice (DOJ) and the FTC, who are the primary enforcers of competition law at the federal level. Law enforcement agencies have been assessing the evolving digital markets in which apps operate.[11] Along with actions by the states, private actors, the courts, and legislators, such legal examinations are shaping the mobile app ecosystem and have helped elevate the discussion of competition barriers, as well as proposals to facilitate greater competition in the app marketplace.[12] These actions have also been tangibly altering the ecosystem. For example, the roles of the two major app stores, including the commission fees they charge, and restrictions they place on how apps interact with consumers, as well as technical barriers, have been impacted by decisions by lawmakers across the globe.[13]

Another area of inquiry has centered around the potential for abuse of commercial data obtained by competitors, to the detriment of privacy and competition.[14] In addition, there are concerns about whether companies interfere with the creation of innovative new products and services by limiting the ability of mobile apps and their associated products and services from accessing a particular set or network of customers.[15] While this study will not include a legal assessment of whether certain practices violate the law, we are interested in learning of rules and practices that make it harder to open and run businesses or that harm innovation.

In addition to competition agencies, other agencies have relevant roles in overseeing specific types of apps as part of a broader ecosystem. For example, the Federal Communications Commission (FCC) also oversees the communications marketplace, including aspects of competition between mobile service providers, and has for years assessed the competitive elements of the ecosystem.[16] The Consumer Financial Protection Bureau (CFPB) has also been examining payment ecosystems.[17]

In the study, NTIA will take a holistic approach to analyzing the mobile app ecosystem with the goal of identifying recommendations to improve competition, reduce barriers to entry, and maximize user benefit with respect to the ecosystem. In addition to

[5] *See* 47 U.S.C. 902 (b)(2)(D) and (H).

[6] NTIA has also examined the economic aspects of modern technology. *See, e.g.,* Internet Policy Task Force & Digital Economy Leadership Team, Dep't of Commerce, Fostering the Advancement of the Internet of Things (Jan. 2017), *https://www.ntia.doc.gov/files/ntia/publications/iot_green_paper_01122017.pdf.*

[7] *See, e.g.,* NTIA ACCESS BROADBAND, 2021 Report (Dec. 2021), *https://www.ntia.doc.gov/files/ntia/publications/ntia_access_broadband_2021_report.pdf.*

[8] This is similar to how the mobile ecosystem is described by United Kingdom's Competition and Markets Authority (CMA) in its study of the ''Mobile ecosystems.'' *See* CMA, Market Study Notice; Mobile Ecosystems, para. 2, June 15, 2021 (UK) (''In this notice the supply of 'mobile ecosystems' means the supply of smartphones and tablets, and associated software such as operating systems, app stores, browsers, and applications'').

[9] *See, e.g.,* Majority Staff of, H. Subcommittee on Antitrust, Commercial and Administrative Law, Comm. on the Judiciary, Rep. and Recommendations on Investigation of Competition in Digital Markets 2020 (House Subcommittee Digital Markets Report) (*e.g.,* descriptions of Google and Apple ecosystems, starting at 211 and 332, respectively), *https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf; see also* CMA, Mobile Ecosystems; Market Study Interim Report, Dec.14, 2021 (UK) (UK CMA Interim Report), *https://www.gov.uk/government/publications/mobile-ecosystems-market-study-interim-report;* Netherland Auth. for Consumers & Markets, Market Study Into Mobile App Stores (2019) (referring to bottlenecks at 40), *https://www.acm.nl/sites/default/files/documents/market-study-into-mobile-app-stores.pdf.*

[10] Barriers that could make it harder to enter a field or succeed might include funding hurdles, restrictions by operating services or regulators, technical variations requiring additional software development and maintenance, or obstacles that prevent a business from obtaining a big enough user base to make their product workable (*e.g.,* a dating app).

[11] *See, e.g., United States et al.* v. *Google,* LLC, No. 1:20–cv–03010, (D.D.C. amended complaint filed Jan 15, 2021); ''FTC Staff Presents Report on Nearly a Decade of Unreported Acquisitions by the Biggest Technology Companies,'' FTC press release, Sept. 15, 2021 (study of acquisitions by Alphabet/Google, Amazon, Apple, Facebook, and Microsoft), *https://www.ftc.gov/news-events/press-releases/2021/09/ftc-report-on-unreported-acquisitions-by-biggest-tech-companies; see also* Substitute Amended Complaint for Injunctive and Other Equitable Relief at 44, *FTC* v. *Meta Platforms, Inc.,* No. 1:20–cv–03590 (D.D.C. Sept. 8, 2021).

[12] *See, e.g.,* Amended Complaint, *Utah* v. *Google LLC,* No. 3:21–cv–05227 (N.D. Cal Nov. 1, 2021) (37 AGs v. Google) (37 Attorneys General allege Google's conduct has driven up competitor prices, limited consumer choice, misrepresented security risks of apps outside of its app store); *see also* Hearing of the Senate Subcommittee on Competition Policy, Antitrust, and Consumer Rights, Antitrust Applied: Examining Competition in App Stores (April 21, 2021), *https://www.judiciary.senate.gov/meetings/antitrust-applied-examining-competition-in-app-stores;* Digital platform services inquiry, Interim report No. 2—App marketplaces, Australian Competition & Consumer Commission, March 2021.

[13] *See, e.g., South Korea: Amended Telecommunications Business Act Will Ban App Payment Monopolies,* Library of Congress, 2021, *https://www.loc.gov/item/global-legal-monitor/2021-09-16/south-korea-amended-telecommunications-business-act-will-ban-app-payment-monopolies/;* KCC Draws Up Standards to Determine Violation of Prohibited Acts By App Market Business Operators, Press Release, Korea Communications Commission (Mar. 10, 2022); *Epic Games, Inc.* v. *Apple, Inc.,* No. 4:20–cv–05640 (N.D. Cal. Sept. 10, 2021) (regarding Apple taking a percentage of apps' revenues and limiting their communication with consumers); *see also,* Deal on Digital Markets Act: EU rules to ensure fair competition and more choice for users, Press Release, European Parliament, IMCO (Mar. 24, 2022) (noting the proposed legislation requires ''that the largest messaging services (such as . . . iMessage) will have to open up and interoperate with smaller messaging platforms, if they so request''), *https://www.europarl.europa.eu/news/en/press-room/20220315IPR25504/deal-on-digital-markets-act-ensuring-fair-competition-and-more-choice-for-users.*

[14] *See, e.g.,* Fact Sheet: Executive Order on Promoting Competition in the American Economy, The White House (July 9, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/; see also,* House Subcommittee Digital Markets Report, *supra* note 6, at 43.

[15] *See, e.g.,* 37 *AGs* v. *Google, supra* note 9; *see also,* House Subcommittee Digital Markets Report, *supra* note 6, at 178.

[16] *See, e.g.,* FCC, 2020 Communications Marketplace Report, GN Doc. No. 20–60 (Dec. 31, 2020); FCC, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, DA–16–1061, WT Doc. No. 16–137, paras. 124–7 (Sept. 23, 2016) (19th Mobile Competition Report) (discussing mobile applications).

[17] *See, e.g.,* CFPB, Consumer Access to Financial Records, advance notice of proposed rulemaking, CFPB–2020–0034, 85 FR 71003 (Nov. 2020).

fundamentals about the structure of the ecosystem, including how the apps are distributed, there are many issues that might be relevant to developers and app users. For example, common occurrences of fraud—or perceptions of it—might impact whether consumers download apps and businesses are comfortable offering their products through specific distribution channels. While there are many issue areas and markets that could be brought into this study, the scope will only address topics most relevant to the mobile app ecosystem.

Given the incredible promise that the app system holds, NTIA is also interested in learning what app users need to maximize user benefit,[18] particularly users who use apps in their daily life or for business operations. There is limited information on how people use apps. For example, some sources estimate that each mobile device has 20–46 apps loaded at any time, but there is limited comparable data to confirm whether that is an accurate or optimal number to foster innovation.[19]

Topic areas that the agency will use to address mobile app ecosystem competition in the forthcoming report will be informed by input from public comment. Possible topics are outlined below.

II. Request for Comment

Through this Request for Comment, NTIA is seeking public input to further develop its understanding of competition within the mobile app ecosystem. NTIA is looking for concrete and specific information as to what app developers, organizations, and device (*i.e.,* phones; tablets) users experience, and any potential challenges or barriers that limit app distribution or user adoption. To the extent commenters choose to respond to the specific questions asked, responses should generally follow the structure below and note the number corresponding to the question. As detailed below, through this Request for Comment, NTIA is seeking information on the state of competition, the factors affecting app development and distribution, and active ways to increase competition, through government or private sector action.

Definitions and Statistics

1. How should we measure whether the app ecosystem is competitive?

a. How should the ''success'' of an app be measured? [20]

b. How should the ''failure'' of an app be measured? [21] What is known about the reasons that app developers no longer offer or support apps?

c. Does the reported total of the number of apps available at any one time in an app store have bearing on the state of competition among apps or particular categories of apps? [22]

2. Are there any important and specific entities (or categories of entities) such that it would be a mistake to omit—or improperly include—them by defining the ''mobile app ecosystem'' to focus on mobile devices, such as phones and tablets?

a. If so, how should this study be scoped so that it is optimal but feasible?

b. For example, should mobile apps offered specifically for enterprise use (*e.g.,* for use by businesses, not for consumers) be considered in this study?

3. Apps are not all the same. For example, some have different technical features and capabilities (*e.g.,* location-based apps compared to messaging apps), while others are bound by specific regulatory guardrails (*e.g.,* banking apps or children's apps). In the context of framing competitiveness within the ecosystem, how should we categorize types of apps so that they are grouped by distinguishable barriers and other significant factors? Are there ways to best categorize or segment the market to diagnose specific market barriers, such as those that could impact app developers, or consumers?

a. Should distinctions be made based on type of content and app functionality?

b. Should distinctions be made based on the level of hardware or operating system integration required for the app to function? For example, categories might include apps that access location data, special-purpose hardware (*e.g.,* near field communications), secure elements for payment, or other credentials.

c. Should a distinction be made for apps that are the primary way (or the only way) the app provider interacts with users, as opposed to apps that are an extension of an existing digital or physical business? Do app-based businesses face different competitive constraints than businesses that have a brand and presence outside of mobile apps?

4. How should web apps (browser-based) or other apps that operate on a mobile middleware layer be categorized?

5. There are some indicators that there is a difference in kind between some apps that generate large amounts of money or are downloaded often and most other apps. For example, one industry analyst reported that 97% of publishers that monetize through the Apple App Store earned less than $1 million per annum in 2021, compared to other reports of more than $1 billion earned by the top 13 apps (including games) on both Apple and Google platforms.[23] What is the best way to assess the competition environment for less popular apps and start-ups?

a. Can any potential harms, such as deficiencies in data security and privacy protections, be traced back to the current market imbalance?

b. Is there evidence to suggest that consumers are less likely to avoid or stop using a particular app even if they would prefer a more privacy enhancing environment because of a lack of competitors offering similar services?

Software and Support for Developers

6. What unique factors, including advantages and obstacles, are there generally for app development — especially start-ups — that are relevant for competition? [24]

a. Are there unique market dynamics in this ecosystem (such as the existence of a small number of dominant technology companies) that affect

[18] *See, e.g.,* Jennifer Bjorhus, Minnesota teen wins Ann Bancroft grant for app to reduce litter, StarTribune (Dec. 24, 2021), *https://www.startribune.com/minnesota-teen-wins-ann-bancroft-grant-for-app-to-reduce-litter/600130173/?refresh=true.*

[19] *See, e.g.,* L. Ceci, Number of apps installed by mobile users in the United States as of 3rd quarter 2019, Statista (Oct. 19, 2021) (''Statista 2021''), *https://www.statista.com/statistics/267309/number-of-apps-on-mobile-phones;* Stephanie Chan, U.S. Consumers Used an Average of 46 Apps Each Month in the First Half of 2021, Sensor Tower (Aug. 19, 2021), *https://sensortower.com/blog/apps-used-per-us-smartphone.*

[20] *See, e.g.,* Using Pirate Metrics to Analyze Your Mobile Application's Audience, Jacob Parcell, General Services Administration (May 12, 2016), *https://digital.gov/2016/05/12/using-pirate-metrics-to-analyze-your-mobile-applications-audience/.*

[21] *See, e.g.,* Why Consumers Download, and Delete, a Retailer's Mobile App: Promos and rewards drive downloads, eMarketer (July 14, 2016), *https://www.emarketer.com/Article/Why-Consumers-Download-Delete-Retailers-Mobile-App/1014212.*

[22] *See, e.g.,* L. Ceci, Number of apps available in leading app stores as of 2021, Statista (Dec. 14, 2021), *https://www.statista.com/statistics/276623/number-of-apps-available-in-leading-app-stores/.*

[23] State of Mobile 2021, App Annie, at 8, (last visited April 14, 2022), *https://www.data.ai/en/go/state-of-mobile-2021/; see also* App Annie: Global app stores' consumer spend up 19% to $170B in 2021, downloads grew 5% to 230B, Sarah Perez, TechCrunch, Jan. 12, 2022, *https://techcrunch.com/2022/01/12/app-annie-global-app-stores-consumer-spend-up-19-to-170b-in-2021-downloads-grew-5-to-230b/?utm_medium=TCnewsletter&tpcc=TCappnewsletter.*

[24] *See, e.g.,* Letter from Congresswoman Eshoo and colleagues to Director Panchanathan, National Science Foundation, and Acting Director Jarmin, Census Bureau, Nov. 4, 2021, *https://eshoo.house.gov/sites/eshoo.house.gov/files/AnnualBusinessSurveyLetter11421.pdf.*

mobile apps' ability to secure funding? [25]

b. Are some methods of monetization essential to the economic success of an app? What are they? For example, is there pressure to incorporate advertising or collect personal data of users [26] or engage in unique relationships with data aggregators?

7. Are there particular obstacles preventing more development from different communities, such as by location/region, ethnicity/race, language, or gender? [27]

8. Are there studies or specific examples of the costs or advantages for app developers to build apps for either, or both, of the main operating systems, iOS and Android (which have different requirements)? [28]

a. What are the challenges specific to multi-platform development and how can they be mitigated?

b. What are the costs and advantages of developing standalone apps for these platforms relative to other means of providing the same services or content, such as web apps, which can operate across platforms?

9. What role does interoperability play in supporting and advancing a competitive mobile app ecosystem?

a. What are the key characteristics of interoperability as it relates to the mobile app ecosystem?

b. What other barriers (*e.g.,* legal, technical, market, pricing of interface access such as Application Programing Interfaces [APIs]) exist, if any, in fostering effective interoperability in this ecosystem? How are these barriers different or similar than those present in other ecosystems?

c. How does data portability, or lack thereof, factor into consumers keeping the same app if they switch from one operating system (iOS or Android) to another? [29]

10. While apps can be coded from scratch, Software Development Kits (SDKs) and other technical tools can make it easier for developers to create apps. What data is available to show how such tools shape the ecosystem and affect the ability of developers to compete?

a. Which tools are most often used by app developers and what are the entities that offer those tools?

b. Do these tools make it easier for a developer to create apps for multiple platforms? How so? Are there any trade-offs (*e.g.,* performance, battery life, or stability) for using these tools?

c. Are developers of certain types of apps more likely to use the assistance?

d. Are there privacy or security concerns associated specifically with these tools?

e. What empirical data exists to support findings on this topic?

11. How do policy decisions by firms that operate app stores, build operating systems, or design hardware impact app developers (*e.g.,* terms of service for app developers)? What empirical data exists to support those findings?

a. In particular, how does a lack of transparency about app market rejections affect app developers (*e.g.,* costs)?

b. How do the policy decisions affect or limit the feasibility or availability of alternative models of app development (*e.g.* open source), delivery (*e.g.* browser-based apps), or funding (*e.g.* non-commercial or donation-based models)?

12. What types of labor restrictions or workforce pipeline challenges, if any, limit paths for app innovation? What may solutions look like?

Avenues for App Distribution

13. Some mobile apps are pre-loaded on mobile devices or set as default apps, while others are only available through an app store, through a browser (web apps), or, for devices using the Android system, by sideloading. Is there data comparing these mechanisms and their effect on app distribution?

a. Is there a competitive advantage to being preloaded or available by default to the users of phones and tablets? What is the evidence to support or contradict there being an advantage? [30]

b. Is there data on the number of developers that have been able to have their apps preloaded or available as default apps or the types of apps?

c. What information is available on the types of agreements these developers reached and with whom to preload or set their app as a default app?

14. As noted above, governments and courts are already exploring concerns about control of app access to users exercised by mobile app stores and other ecosystem participants.

a. What data and studies exist that identify specific additional obstacles that developers and businesses might face related to the distribution of apps? [31] Commenters may reference factual findings in existing cases and filings in government explorations.[32]

b. In particular, what studies have been done on requirements that apps use an app store or operating system's own services or the appeal of alternative mechanisms that do not tie app access to using other products or services from those mechanisms?

15. How do, or might, alternative app stores (other than Google Play or the Apple App Store), affect competition in the mobile app ecosystem?

a. What data is there to assess how well existing alternative stores distribute apps, in general or specific types of apps?

b. What unique barriers are there affecting each of the main operating systems (Android, iOS) that might prevent web apps or—to the extent allowed on Android system—alternative app stores and sideloading, from gaining more popularity with users and app developers than they currently have?

c. Is there analysis comparing competition on iOS ecosystem (where app distribution is limited) to that of alternative distribution mechanisms on Android operating systems?

16. What evidence is there to assess whether an app store model is necessary

[25] *See, e.g.,* Written Testimony of FTC Commissioner Rohit Chopra before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Antitrust, Commercial, and Administrative Law Hearing on Online Platforms and Market Power, Part 3: The Role of Data and Privacy in Competition, (Oct. 18, 2019) (expressing concern ''that many investors are reluctant to allocate capital to innovators that seek to challenge and disrupt this dominance. Instead, investors tell me they prefer to fund companies that can eventually be sold an incumbent''), *https://www.ftc.gov/system/files/documents/public_statements/1549812/chopra_-_testimony_at_hearing_on_online_platforms_and_market_power_part_3_10-18-19.pdf.*

[26] *see, e.g.,* Free and paid distribution for Android and iOS 2022, Statista, March 14, 2022, (last visited April 14, 2022) (Most apps are offered at no direct monetary cost to the user), *https://www.statista.com/statistics/263797/number-of-applications-for-mobile-phones/#:~:text=As%20of%20March%202021%2C%2096.7%20percent%20of%20apps,Store%20and%20Google%20Play%20as%20of%20March%202021.*

[27] *See, e.g.,* Congressional App Challenge, Inclusion and Diversity, *https://www.congressionalappchallenge.us/impact/#Diversity; see, generally,* Congressional App Challenge (last visited April 18, 2022), *https://www.congressionalappchallenge.us/.*

[28] *See, e.g.,* App Development Costs, Business of Apps (2022) (April 1, 2022), *https://www.businessofapps.com/app-developers/research/app-development-cost/; contrast* Sophie Zoria, How the Fragmentation of iOS and Android Platforms Affects App Development, Medium, Swag Soft, June 23, 2020, *https://medium.com/swag-soft/how-the-fragmentation-of-ios-and-android-platforms-affects-app-development-f992cb87bafc.*

[29] For descriptions of some difficulties reported in this area, *see* Majority Staff of, H. Subcommittee on Antitrust, Commercial and Administrative Law, Comm. on the Judiciary, Rep. and Recommendations on Investigation of Competition in Digital Markets, at 102–104 (2020).

[30] While the UK CMA's Interim Report, for example, refers to some studies in this area, the raw data and it suggests further study is necessary. *See, e.g.,* UK CMA Interim Report at 277.

[31] *See, e.g.,* Letter to Kate Reader and Morag Bond, Co-General Managers, Digital Platforms Unit, Australian Competition and Consumer Comm'n, from Microsoft, Oct. 16, 2020, *https://www.accc.gov.au/system/files/Microsoft%20%2816%20October%29.pdf.*

[32] *See, e.g.,* Report regarding Fact-Finding Survey on Digital Platforms (Business-to-Business transactions on retail platform and app store), Fair Trade Commiss'n, (Oct. 31, 2019) (Japan).

for mobile devices, instead of the general-purpose model used for desktop computing applications?

17. Mobile app stores act as initial screeners and responders for concerns about mobile app content, such as fraudulent apps and malware.[33] Similar issues for screening and responding exist in other contexts, such as website hosting and search engine retrieval. What empirical data is there analyzing any unique content screening issues related to mobile app stores that affect competition?

a. Is there evidence of legitimate apps being rejected from app stores or otherwise blocked from mobile devices? Is there evidence that this is a common occurrence or happens to significant numbers of apps?

b. What assessments are there of their effectiveness, or lack therefore, on security and privacy of end users? [34]

c. Are there disincentives or unique barriers affecting the degree of security and privacy protections offered by alternative app stores?

18. Are there other areas, specific technologies or procedures, that offer lessons on more and less successful ways to screen out problematic apps? What are the characteristics of such success?

a. Are there good examples by enterprise users? [35]

b. For example, some devices allow sideloading only after warning the user to make sure they trust the app before proceeding with the download, in a way similar to how some browsers issue warnings for unknown websites. What material exists about the efficacy of such methods?

c. What roles, if any, do independent or third party security testing play in the app store ecosystem?

d. Does the current model discourage competition and innovation in the development or advancement of security testing?

19. How does the existence of imposter and other fraudulent apps affect developer incentives or legitimate app lifecycles?

App Users

20. What research exists regarding the number of active apps consumers have on their mobile devices at any one time and how often they try new ones?

a. Are there generalizations that can be made based on items such as the cost of the app, type of broadband access or device, or even categories of phone users?

21. How do most consumers find and make decisions to use apps?

a. Is there data to show whether the usage of an app or any other relevant metric for performance is tied to existing brand visibility outside of the mobile app ecosystem?

b. Is there data about how often people use the search feature in an app store, search engines through browsers, or particular ranking lists of popular apps or app storefronts?

c. Is there empirical data that examines how app rankings, app reviews, or other objective measures of apps (for example, popularity, quality, or number of downloads) are used (or manipulated) to influence consumer choices?

22. The E.O. asks the Department to explore ways to maximize ''user benefit'' with regard to competition in the mobile app ecosystem. How should we measure or consider user benefit?

a. What is the appropriate scope of users for consideration? Should it include developers?

b. If there are conflicts between end-user and developer interests, how does this affect the assessment of user benefit?

c. How might convergence of end-users and developers—through low-code environments, for example—affect this dynamic moving forward?

23. Do apps that are developed for, or used by, certain communities (such as by income, ethnicity/race, or gender) face significantly different competitive challenges? What are the challenges?

Other Factors

24. Some apps make use, or would like to make use, of additional mobile device components beyond those that are more commonly accessible (*e.g.,* camera, microphone, contacts) in order to offer an innovative product or service, but the operating system or device provider does not allow such access.[36] Similarly, for some apps, it might be essential to be able to interconnect to other hardware and services, such as cloud services. What are the valid security concerns and technical limitations on what device functionality an app can access?

a. What factors should be considered in striking a balance between encouraging companies to ensure proper security measures, while allowing third parties to access the protected features that might allow for further innovation and competition?

b. Are there specific unnecessary (*e.g.,* technical) constraints placed on this ability of app developers to make use of device capabilities, whether by device-makers, service providers or operating system providers, that impact competition?

c. Are there other means or factors to consider for mitigating specific risks that would not inhibit competition?

25. What unique challenges, if any, do software updates pose for app competition, including updates driven by the app developers and those necessitated by other ecosystem changes, such as operating system updates? How does this impact security and costs for those apps, products, and services?

26. Are there governance practices, regulations or laws that impact competition among certain categories of apps more than others, or their non-app counterparts?

Potential Actions To Increase Competition

27. What specific measures might the federal government take to foster healthy competition—especially for nascent app innovation—in the mobile app ecosystem?

28. What specific actions could the private sector and civil society take to ensure and promote healthy app competition (such as technical standards development or monitoring)? [37]

Instructions for Commenters

NTIA invites comment on the full range of issues presented by this Notice, including issues that are not specifically

[33] *See, e.g.,* App Store stopped over $1.5 billion in suspect transactions in 2020, Apple, *https://www.apple.com/newsroom/2021/05/app-store-stopped-over-1-5-billion-in-suspect-transactions-in-2020/; see also* Google Developer Policy Center (with policies prohibiting items such as impersonation of other apps) (last visited April 14, 2022), *https://play.google.com/about/developer-content-policy/.*

[34] *See, e.g.,* Complaint, In the Matter of Support King LLC (*SpyFone.com*), FTC, No. 1923003 (filed Dec. 21, 2021) (complaint filed with settlement decision and order), *https://www.ftc.gov/system/files/documents/cases/1923003c4756spyfonecomplaint_0.pdf.*

[35] For more on mobile vetting and security issues, *see, e.g.,* Vetting the Security of Mobile Applications, Revision 1, NIST Special Publication 800–163, National Institute of Science and Technology (NIST) (April 2019), *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-163r1.pdf; see also* Mobile Device Security: Corporate-Owned Personally-Enabled (COPE), NIST Special Publication 1800–21 (Sept. 2020), *https://doi.org/10.6028/NIST.SP.1800-21.*

[36] *See, e.g.,* Testimony of Testimony of Kirsten Daru, Chief Privacy Officer and General Counsel for Tile, Inc., before the Senate Committee on the Judiciary Subcommittee on Competition Policy, Antitrust, and Consumer Rights (April 2021), *https://www.judiciary.senate.gov/imo/media/doc/04.21.21%20Kirsten%20Daru%20Senate%20Judiciary%20Testimony%20Final.pdf.*

[37] *See, e.g.,* Adapting ahead of regulation: a principled approach to app stores, Brad Smith, President & Vice Chair, Microsoft, Feb 9, 2022, *https://blogs.microsoft.com/on-the-issues/2022/02/09/open-app-store-principles-activision-blizzard/.*

raised in the above questions. Commenters are encouraged to address any or all of the questions above. To the extent commenters choose to respond to the specific questions asked, responses should generally follow the structure above and note the number corresponding to the question.

Comments that contain references to studies, research, and other empirical data that are not widely available should include copies of the referenced materials along with the submitted comments. Commenters should include the name of the person or organization filing the comment, which will facilitate agency follow up for clarifications as necessary.

Commenters are advised not to incorporate information that concerns business trade secrets or other confidential commercial or financial information as part of the comment.[38]

Dated: April 18, 2022.

Milton Brown,

Chief Counsel (Acting), National Telecommunications and Information Administration.

[FR Doc. 2022–08573 Filed 4–21–22; 8:45 am]

BILLING CODE 3510–60–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Strategic Plan Notice

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Request for comments on the agency's draft Strategic Plan for FY 2022–2026; reopening of comment period.

SUMMARY: The Commission is reopening the deadline for the submission of written comments in response to its March 18, 2022, draft Strategic Plan.

DATES: The comment period for the draft Strategic Plan, a non-rulemaking notice published March 18, 2022, at 87 FR 15412, is reopened. Initial written comments must now be received no later than 11:59 p.m. Eastern Time on April 30, 2022.

ADDRESSES: You may submit comments, identified by CPPBSD–2022–0003 only by the following method: Internet—Federal eRulemaking Portal. Electronic comments may be submitted through *https://www.regulations.gov.* To locate the document, use CPPBSD–2022–0003 or key words such as ''Strategic Plan,'' ''Committee for Purchase,'' or ''AbilityOne,'' to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an alternative accessible format.

Electronic Access to This Document: The official version of this document is the document referenced in the **Federal Register** of March 18, 2022. You may access the official edition of the **Federal Register** at *www.govinfo.gov.* You may also access Commission documents published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

FOR FURTHER INFORMATION CONTACT: Shelly Hammond, Director of Contracting and Policy, by telephone 571–457–9468 or by email at *shammond@abilityone.gov.*

During and after the comment period, you may inspect all public comments about the draft Strategic Plan by accessing *Regulations.gov.*

Assistance to Individuals With Disabilities in Reviewing the Draft Strategic Plan: Upon request, we will provide an appropriate accommodation to an individual with a disability who needs assistance to review the draft Strategic Plan. If you want to contact us to request assistance, please contact the person listed in this section.

SUPPLEMENTARY INFORMATION: On March 18, 2022, the Commission issued a request for comments on the agency's draft FY 2022–2026 Strategic Plan. To ensure that members of the public have sufficient time to comment, and to ensure the Commission has the benefit of a complete record, the Commission is reopening the deadline for submission of initial comments to no later than 11:59 p.m. Eastern Time on April 30, 2022.

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–08616 Filed 4–21–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds a product to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* May 22, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 11/26/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in

[38] *See also* 15 CFR 4.9(c) (concerning the designation of business information by commenters).

connection with the product(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s):
6840–00–NIB–0158—Lysol Disinfecting Wipes, Pre-Moistened, Lemon and Lime, Soft Pack
Designated Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI
Distribution: A-List
Mandatory for: Total Government Requirement

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–08615 Filed 4–21–22; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m. EDT, Friday, April 22, 2022.

PLACE: CFTC headquarters office, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

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

Dated: April 20, 2022.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2022–08712 Filed 4–20–22; 11:15 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intended Disinterment; Correction

AGENCY: Department of the Army, DoD.

ACTION: Notice of intended disinterment; correction.

SUMMARY: This document corrects the previous notice published in the **Federal Register** on February 14, 2022. The notice respectively corrects the total number of names from 6 to 8 students.

DATES: The disinterment is scheduled to begin on June 6, 2022. Transportation to and re-interment in private cemeteries will take place as soon as practical after the disinterment. If other living relatives object to the disinterment of these remains, please provide written objection to Captain Travis Fulmore at the email addresses listed below prior to May 1st, 2022. Such objections may delay the disinterment for the decedent in question.

ADDRESSES: Objections from family members and public comments can be mailed to Captain Travis Fulmore, OAC Project Manager, 1 Memorial Avenue, Arlington, VA 22211 or emailed to *usarmy.pentagon.hqda-anmc.mbx.accountability-coe@mail.mil* (preferred).

FOR FURTHER INFORMATION CONTACT: Captain Travis Fulmore OAC Project Manager, (703) 695–3570 or at the email address listed above.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 14, 2022, in FR Doc. 2022–03111, on page 8238, in the first column, correct the **SUMMARY** caption to read:

SUMMARY: The Office of Army Cemeteries (OAC) is honoring the requests of the family members to disinter the human remains of 8 Native American students from the Carlisle Barracks Post Cemetery, Carlisle, Pennsylvania. The decedent names are: Raleigh James from the Washoe tribe, Lottie Sireech from the Ute tribe, Wade Ayres from the Catawba tribe, Anatasia Achwak (Ashowak) and Anna Vereskin from the Alaskan (Aleut) tribe, Frank Green and Paul Wheelock from the Oneida tribe and Ellen Macy from the Umqua tribe. These students died between 1880 and 1910 while attending the Carlisle Indian Industrial School. OAC has received written requests for disinterment from the closest living descendent of each of the 8 individuals. OAC will disinter and facilitate the transport and reinternment of the remains to private cemeteries chosen by the families at government expense. This disinterment will be conducted under the authority of Army Regulation 290–5, in accordance with the Native American Graves Protection and Repatriation (NAGPRA) savings clauses at 25 U.S. Code § 3009. Individually marked graves located within the Carlisle Barracks Post Cemetery do not constitute ''holdings or collections'' of the Army (§ 3003(a)) nor does NAGPRA (§ 3002) require the Army to engage in the intentional excavation or exhumation of a grave.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2022–08582 Filed 4–21–22; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees—Defense Advisory Committee on Military Personnel Testing

AGENCY: Department of Defense (DoD).

ACTION: Charter renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the Defense Advisory Committee on Military Personnel Testing (DAC–MPT).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

SUPPLEMENTARY INFORMATION: The DAC–MPT is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., App.) and 41 CFR 102–3.50(d). The charter and contact information for the DAC–MPT's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The DAC–MPT provides the Secretary of Defense and Deputy Secretary of Defense independent advice and recommendations on matters and policies related to the military personnel testing for selection and classification. The DAC–MPT provided advice on issues related to the research, development, implementation, and maintenance of enlisted and officer accession tests and career exploration programs. Technical issues addressed include, but are not limited to, processes and policies related to administration and security of testing and theoretical development of constructs, measurement precision, validity, reliability, equating, efficiency, fairness, and other operational and policy considerations.

The DAC–MPT shall consist of no more than seven members, appointed in accordance with DoD policy and procedures and who are eminent authorities in the fields of educational and psychological testing and career development. Members must have expertise in the following, or similar areas, psychometrics, test development, statistical measurement, big-data

analytics, industrial/organization psychology, selection and classification, educational measurement, career development and counseling, and diversity and inclusion.

The appointment of DAC–MPT members shall be approved by the DoD Appointing Authority, for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the DAC–MPT, to include its subcommittees, or serve on more than two DoD Federal advisory committees at one time.

DAC–MPT members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee (SGE) members.

DAC–MPT members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee (RGE) members.

The DoD Appointing Authorities shall appoint the DAC–MPT's leadership from among the membership previously approved to serve on the DAC–MPT in accordance with DoD policy and procedures, for a term of service of one-to-two years, with annual renewal, which shall not exceed the member's approved DAC–MPT appointment.

All DAC–MPT members are appointed to exercise their own best judgment on behalf of the DoD, without representing any particular points of view, and to discuss and deliberate in a manner that is free from conflicts of interest. With the exception of reimbursement of official DAC–MPT-related travel and per diem, DAC–MPT members serve without compensation.

The public or interested organizations may submit written statements to the DAC–MPT membership about the DAC–MPT's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DAC–MPT. All written statements shall be submitted to the DFO for the DAC–MPT, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: April 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08638 Filed 4–21–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees—Board on Coastal Engineering Research

AGENCY: Department of Defense (DoD).

ACTION: Charter renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the charter for the Board on Coastal Engineering Research (BCER).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

SUPPLEMENTARY INFORMATION: The BCER charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.50(a). The charter and contact information for the BCER's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

Pursuant to 33 U.S.C. 426–2, the BCER provides independent advice and recommendations on the functions of the Coastal Engineering Research Center. The BCER provides independent advice and recommendations on the work of the Coastal and Hydraulics Laboratory, which includes the Coastal Engineering Research Center, on coastal engineering research priorities and additional functions as assigned by the Commanding General, U.S. Army Corps of Engineers (''the Chief of Engineers'').

Pursuant to 33 U.S.C. 426, the BCER shall be composed of seven members. Four members of the BCER will be officers of the Corps of Engineers and serve as ex-officio members with one position being occupied by the Deputy Commanding General for Civil and Emergency Operations, U.S. Army Corps of Engineers for no fixed term of service. The remaining three BCER members shall be civilian engineers who are selected with regard to their special fitness in the field of beach erosion and shore protection. The Deputy Commanding General for Civil and Emergency Operations, Corps of Engineers, shall serve as the President of the Board.

The appointment of the civilian BCER members and the three coastal division commanders shall be approved by the Secretary of Defense or the Deputy Secretary of Defense (the DoD Appointing Authority), for a term of service of one-to-four years, in accordance with DoD policy and procedures. BCER members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, are appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. BCER members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services are appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee (RGE) members. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the BCER or serve on more than two DoD Federal advisory committees at one time.

All BCER members are appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Pursuant to section 105 of Public Law 91–611, civilian members on the BCER may be paid at a rate not to exceed the daily equivalent of the rate for a GS–15, step 10, for each day of attendance at BCER meetings, not to exceed 30 days per year, in addition to travel and other necessary expenses connected with their official duties on the BCER, in accordance with the provisions of 5 U.S.C. 5703(b), (d) and 5707. RGE members may be reimbursed for official BCER-related travel and per diem.

The public or interested organizations may submit written statements about BCER mission and functions. Written statements may be submitted at any time or in response to a stated agenda of a planned meeting of the BCER. All written statements shall be submitted to the DFO for the BCER, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: April 18, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08636 Filed 4–21–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees—National Security Education Board

AGENCY: Department of Defense (DoD).

ACTION: Charter renewal of Federal Advisory Committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the charter for the National Security Education Board (NSEB).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

SUPPLEMENTARY INFORMATION: The NSEB's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.50(d). The charter and contact information for the NSEB's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

Pursuant to 50 U.S.C. 1902(a)(3), the NSEB shall consult on the National Security Scholarship, Fellowships, and Grants Program as described in more detail in 50 U.S.C. Ch. 37.

Pursuant to 50 U.S.C. 1903(b), the NSEB shall be composed of the following individuals or the representatives of such individuals:

1. The Secretary of Defense, who shall serve as the Chair of the NSEB.
2. The Secretary of Education.
3. The Secretary of State.
4. The Secretary of Commerce.
5. The Secretary of Homeland Security.
6. The Secretary of Energy.
7. The Director of National Intelligence.
8. The Chair of the National Endowment for the Humanities.
9. Six individuals appointed by the President, who shall be experts in the fields of international, language, area, and counterproliferation studies education and who may not be officers or employees of the Federal Government.

Members of the NSEB appointed by the President shall be appointed for a period specified by the President at the time of their appointment, but not to exceed four years.

NSEB members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. NSEB members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. Pursuant to 50 U.S.C. 1903(c), individuals appointed by the President shall receive no compensation for service on the NSEB. All members shall receive reimbursement of official NSEB-related travel and per diem.

The public or interested organizations may submit written statements to the NSEB about the NSEB's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the NSEB. All written statements shall be submitted to the DFO for the NSEB, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: April 19, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–08639 Filed 4–21–22; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting, May 11 and June 8, 2022

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 11, 2022. A business meeting will be held the following month on Wednesday, June 8, 2022. Both the hearing and the business meeting are open to the public. The public hearing will be conducted remotely. The business meeting will be held both remotely and in-person at the Chase Center on the Riverfront located at 815 Justison Street, Wilmington, DE 19801, in the Center's Dravo Auditorium. Details about the remote platforms for the two events and any Covid protocols for the in-person business meeting venue will be posted on the Commission's website, *www.drbc.gov,* at least ten days prior to the respective meeting dates.

Public Hearing. The Commission will conduct the public hearing remotely on May 11, 2022, commencing at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges, and other projects that could have a substantial effect on the basin's water resources; and resolutions: (a) Adopting the Commission's Water Resources Program FY2023–2025, (b) approving the Commission's FY2023 Expense Budget, and (c) providing for the signatory parties' contributions for the support of the Commission's FY2023 Expense and Capital Budgets.

A list of the projects scheduled for hearing, including project descriptions, will be posted on the Commission's website, *www.drbc.gov,* in a long form of this notice at least ten days before the hearing date.

Written comments on matters scheduled for hearing on May 11, 2022, will be accepted through 5:00 p.m. on Monday, May 16, 2022.

The public is advised to check the Commission's website periodically during the ten days prior to the hearing date, as items scheduled for hearing may be postponed if additional time is needed to complete the Commission's review. Items also may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is asked to be aware that the details of projects may change during the Commission's review, which is ongoing.

Public Meeting. The public business meeting on June 8, 2022, will begin at 10:30 a.m. and will include: Adoption of the Minutes of the Commission's March 9, 2022, business meeting; announcements of upcoming meetings and events; a report on hydrologic conditions; reports by the Executive Director and the Commission's General Counsel; and consideration of any items for which a hearing has been completed or is not required. The agenda is expected to include consideration of the draft dockets for withdrawals, discharges, and other projects that were subjects of the public hearing on May 11, 2022; and resolutions: (a) Adopting the Commission's Water Resources Program FY 2023–2025, (b) approving the Commission's FY 2023 Expense Budget, and (c) providing for the signatory parties' contributions to support of the Commission's FY 2023 Expense and Capital Budgets.

After all scheduled business has been completed and as time allows, the business meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission on any topic concerning management of the Basin's water resources outside the context of a duly noticed, on-the-record public hearing.

There will be no opportunity for additional public comment for the record at the June 8, 2022, business meeting on items for which a hearing was completed on May 11, 2022, or a previous date. Commission

consideration on June 8, 2022, of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Sign-Up for Oral Comment. Individuals who wish to comment on the record during the public hearing on May 11, 2022, or to address the Commissioners informally during the Open Public Comment portion of the meeting on June 8, 2022, as time allows, are asked to sign up in advance through EventBrite. Links to EventBrite for the public hearing and the business meeting will be posted at *www.drbc.gov* at least ten days before each meeting date. For assistance, please contact Ms. Patricia Hausler of the Commission staff, at *patricia.hausler@drbc.gov.*

Addresses for Written Comment. Written comment on items scheduled for hearing may be made through the Commission's web-based comment system, a link to which is provided at *www.drbc.gov.* Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged. Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628–0360. For assistance, please contact Patricia Hausler at *patricia.hausler@drbc.gov.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Denise McHugh, 609–883–9500, ext. 240. For other questions concerning hearing items, please contact David Kovach, Project Review Section Manager at 609–883–9500, ext. 264.

Authority: Delaware River Basin Compact, Public Law 87–328, Approved September 27, 1961, 75 Statutes at Large, 688, sec. 14.4.

Dated: April 13, 2022.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2022–08611 Filed 4–21–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0054]

Agency Information Collection Activities; Comment Request; Foreign Graduate Medical School Consumer Information Reporting Form

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before June 21, 2022.

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–2022–SCC–0054. 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, ED 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 by fax or email and those 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 PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education 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: Foreign Graduate Medical School Consumer Information Reporting Form.

OMB Control Number: 1845–0117.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 24.

Total Estimated Number of Annual Burden Hours: 384.

Abstract: This is a request for an extension of the information collection to obtain consumer information from foreign graduate medical institutions that participate in the William D. Ford Federal Direct Loan Program (Direct Loan Program) as authorized under Title IV of the Higher Education Act of 1963, as amended, (HEA). The form is used for reporting specific graduation information to the Department of Education (the Department) with a certification signed by the institution's President/CEO/Chancellor.

Dated: April 19, 2022.

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. 2022–08622 Filed 4–21–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0016]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Annual Performance Report for the Gaining Early Awareness for Undergraduate Programs

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before May 23, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Nicole Josemans, 202–205–0064.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education 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: Annual Performance Report for the Gaining Early Awareness for Undergraduate Programs.

OMB Control Number: 1840–0777.

Type of Review: An extension without change of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 155.

Total Estimated Number of Annual Burden Hours: 1,550.

Abstract: Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), created in the Higher Education Act Amendments of 1998 (Title IV, Section 404A–404H), is a discretionary grant program which encourages applicants to provide support and maintain a commitment to eligible low-income students, including students with disabilities, to assist the students in obtaining a secondary school diploma and preparing for and succeeding in postsecondary education. GEAR UP provides grants to states and partnerships to provide services at high-poverty middle and high schools. GEAR UP grantees serve an entire cohort of students beginning no later than the seventh grade and follow them through graduation and, optionally, the first year of college.

Dated: April 19, 2022.

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. 2022–08633 Filed 4–21–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0057]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Charter School Community Impact Analysis and Management Contracts

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before May 23, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Ashley Gardner, 202–453–6787.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), 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. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education 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: Charter School Community Impact Analysis and Management Contracts.

OMB Control Number: 1810–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 365.

Total Estimated Number of Annual Burden Hours: 21,900.

Abstract: On March 14, 2022, The Department published in the **Federal Register** a Notice of Proposed Priorities, Requirements, Definitions, and Selection Criteria for the Charter School Programs' State Entities program, Charter School Management Organizations program, and Developer program (Vol. 87, No. 49, pages 14197–14210). Specifically, the Department proposed two new priorities and accompanying application requirements, definitions, and selection criteria for applicants proposing to create results-driven policies to help promote positive student outcomes, student and staff diversity, educator and community empowerment, promising practices, and accountability, including fiscal transparency and responsibility, in charter schools supported with CSP funds, which can serve as models for other charter schools. The Charter School Programs Office of the Department is requesting a new information collection through a community impact analysis and around contracts with for profit charter education organizations due to this rulemaking for the CSP program authorized under Title VI, Part C, Subpart 1, of the Elementary and Secondary Education Act, as amended by ESSA. The CSP Grants (CFDA 84.282 including SE 84.282A, CMO 84.282M, and Developer (84.282B and E)) program is a competitive discretionary grant program. The grant applications submitted for this program are evaluated based on how well an applicant addresses the selection criteria and are used to determine applicant eligibility and amount of award for projects selected for funding.

Dated: April 19, 2022.

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. 2022–08627 Filed 4–21–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Fusion Energy Sciences Advisory Committee (FESAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 25, 2022; 10:30 a.m. to 5:00 p.m. EDT.

ADDRESSES: This meeting will be held digitally via Zoom. Instructions for Zoom, as well as any updates to meeting times or meeting agenda, can be found on the FESAC meeting website at: *https://science.osti.gov/fes/fesac/Meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Samuel J. Barish, Designated Federal Officer, Office of Fusion Energy Sciences (FES); U.S. Department of Energy; Office of Science; 1000 Independence Avenue SW; Washington, DC 20585; Telephone: (301) 903–2917; Email address: *sam.barish@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: to provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the fusion energy sciences program.

Tentative Agenda

- News from the Under Secretary for Science and Innovation
- News from the Office of Science
- FES Perspective
- The Path Forward After the White House Summit on Fusion
- Public Comment
- Adjourn

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, you should contact Dr. Barish at *sam.barish@science.doe.gov.* Reasonable provision will be made to include the scheduled oral statements during the Public Comment time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for on the Fusion Energy Sciences Advisory Committee website—*http://science.energy.gov/fes/fesac/.*

Signed in Washington, DC, on April 19, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–08649 Filed 4–21–22; 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 25, 2022; 1:00 p.m.–5:00 p.m.

ADDRESSES: This hybrid meeting will be open to the public virtually via WebEx only. To attend virtually, please contact the Northern New Mexico Citizens Advisory Board (NNMCAB) Executive Director (below) no later than 5:00 p.m. MT on Friday, May 20, 2022.

Board members, Department of Energy (DOE) representatives, agency liaisons, and support staff will participate in-person, strictly following COVID–19 precautionary measures, at: La Fonda on the Plaza, La Terazza Room, 100 E. San Francisco Street, Santa Fe, NM 87501.

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:

1. Presentation on Waste Types and Disposition Sites
2. Various program updates

Public Participation: The in-person/online virtual hybrid meeting is open to the public virtually via WebEx only. Written statements may be filed with the Board no later than 5:00 p.m. MT on Friday, May 20, 2022, 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 19, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–08646 Filed 4–21–22; 8:45 am]

BILLING CODE 6450–01–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 16, 2022; 12:30 p.m.–4:45 p.m., Tuesday, May 17, 2022; 8:30 a.m.–3:30 p.m.

ADDRESSES: Columbia Metropolitan Convention Center, 1101 Lincoln Street, Columbia, SC 29201.

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.*

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 16, 2022:

Chair Update
Agenda Review
Agency Updates
Committee Updates:
- Administrative & Outreach Committee
- Facilities Disposition & Site Remediation Committee
- Nuclear Materials Committee
- Waste Management Committee

Presentation: *Savannah River Site Cold War Preservation*
Public Comments
Board Business

Tuesday, May 17, 2022:

Agenda Review
Presentations:
- *H-Canyon Spent Nuclear Fuel Processing*
- *Accelerated Basin De-Inventory Initiative*
- *D-Area Deactivation and Decommissioning and Cleanup Progress*
- *Performance Assessment Training*
- *Tank Closure versus Risk Reduction*

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. ET on Friday, May 13, 2022. 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. ET on Monday, May 23, 2022. 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 19, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–08647 Filed 4–21–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology (PCAST)

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces an open meeting of the President's Council of Advisors on Science and Technology (PCAST). The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday May 12, 2022; 2:00 p.m. to 4:15 p.m. ET.

ADDRESSES: Information to participate virtually can be found on the PCAST website closer to the meeting at: *www.whitehouse.gov/PCAST/meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Sarah Domnitz, Designated Federal Officer, PCAST, email: *PCAST@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION: PCAST is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from the White House, cabinet departments, and other Federal

agencies. See the Executive Order at *whitehouse.gov*. PCAST is consulted on and provides analyses and recommendations concerning a wide range of issues where understanding of science, technology, and innovation may bear on the policy choices before the President. The Designated Federal Officer is Dr. Sarah Domnitz. Information about PCAST can be found at: *www.whitehouse.gov/PCAST.*

Tentative Agenda: PCAST will hear from invited speakers on and discuss challenges and opportunities for U.S. leadership in semiconductors. Additional information and the meeting agenda, including any changes that arise, will be posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

Public Participation: The meeting is open to the public. It is the policy of the PCAST to accept written public comments no longer than 10 pages and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on May 12, 2022, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *PCAST@ostp.eop.gov,* no later than 12:00 p.m. Eastern Time on May 5, 2022. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will select speakers on a first-come, first-served basis from those who registered. Those not able to present oral comments may file written comments with the council.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to *PCAST@ostp.eop.gov* no later than 12:00 p.m. Eastern Time on May 5, 2022, so that the comments can be made available to the PCAST members for their consideration prior to this meeting.

PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

Minutes: Minutes will be available within 45 days at: *www.whitehouse.gov/PCAST/meetings.*

Signed in Washington, DC, on April 19, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–08648 Filed 4–21–22; 8:45 am]

BILLING CODE 6450–01–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: EC22–53–000.

Applicants: GC PGR Holdco, LLC, Beulah Solar, LLC, Centerfield Cooper Solar, LLC, Highest Power Solar, LLC, Lick Creek Solar, LLC, Peony Solar, LLC, PGR 2020 Lessee 8, LLC, PGR 2021 Lessee 1, LLC, PGR 2021 Lessee 2, LLC, PGR 2021 Lessee 5, LLC, PGR 2021 Lessee 7, LLC, PGR Lessee L, LLC, PGR Lessee O, LLC, Stanly Solar, LLC, Sugar Solar, LLC, Trent River Solar, LLC, Trent River Solar Mile Lessee, LLC, TWE Bowman Solar Project, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Consideration of GC PGR Holdco, LLC.

Filed Date: 4/15/22.

Accession Number: 20220415–5332.

Comment Date: 5 p.m. ET 5/6/22.

Docket Numbers: EC22–54–000.

Applicants: Triolith Energy Fund L.P., Cascade Trading Ltd.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Triolith Energy Fund L.P., et al.

Filed Date: 4/15/22.

Accession Number: 20220415–5342.

Comment Date: 5 p.m. ET 5/6/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–97–000.

Applicants: Sonoran West Solar Holdings 2, LLC.

Description: Sonoran West Solar Holdings 2, LLC submits Request for Commission Certification of Exempt Wholesale Generator Status.

Filed Date: 4/15/22.

Accession Number: 20220415–5324.

Comment Date: 5 p.m. ET 5/6/22.

Docket Numbers: EG22–98–000.

Applicants: Sonoran West Solar Holdings, LLC.

Description: Sonoran West Solar Holdings, LLC submits Request for Commission Certification of Exempt Wholesale Generator Status.

Filed Date: 4/15/22.

Accession Number: 20220415–5325.

Comment Date: 5 p.m. ET 5/6/22.

Docket Numbers: EG22–99–000.

Applicants: Enel Green Power Estonian Solar Project, LLC.

Description: Enel Green Power Estonian Solar Project, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/13/22.

Accession Number: 20220413–5245.

Comment Date: 5 p.m. ET 5/4/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–1265–001.

Applicants: UNS Electric, Inc.

Description: Compliance filing: Order 864 Compliance Filing to be effective 1/27/2020.

Filed Date: 4/18/22.

Accession Number: 20220418–5325.

Comment Date: 5 p.m. ET 5/9/22.

Docket Numbers: ER22–1654–000.

Applicants: Louisville Gas and Electric Company.

Description: Section 205(d) Rate Filing: LGEKU KYMEA Amended NITSA to be effective 4/1/2022.

Filed Date: 4/18/22.

Accession Number: 20220418–5142.

Comment Date: 5 p.m. ET 5/9/22.

Docket Numbers: ER22–1655–000.

Applicants: PJM Interconnection, L.L.C.

Description: Section 205(d) Rate Filing: Original ISA, SA No. 6396; Queue No. AD2–074/AF1–042 to be effective 3/18/2022.

Filed Date: 4/18/22.

Accession Number: 20220418–5305.

Comment Date: 5 p.m. ET 5/9/22.

Docket Numbers: ER22–1656–000.

Applicants: ITC Midwest LLC.

Description: Section 205(d) Rate Filing: Amended DTIA with Jo-Carroll Energy to be effective 6/18/2022.

Filed Date: 4/18/22.

Accession Number: 20220418–5387.

Comment Date: 5 p.m. ET 5/9/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–38–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Orange and Rockland Utilities, Inc.

Filed Date: 4/15/22.

Accession Number: 20220415–5327.

Comment Date: 5 p.m. ET 5/6/22.

Docket Numbers: ES22–39–000.

Applicants: West Penn Power Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of West Penn Power Company.

Filed Date: 4/15/22.

Accession Number: 20220415–5331.

Comment Date: 5 p.m. ET 5/6/22.

Docket Numbers: ES22–40–000.

Applicants: Pennsylvania Power Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Pennsylvania Power Company.

Filed Date: 4/15/22.

Accession Number: 20220415–5338.

Comment Date: 5 p.m. ET 5/6/22.

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: *https://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 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08592 Filed 4–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1652–000]

Energy Prepay I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Energy Prepay I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 9, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *https://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08596 Filed 4–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–2429–004.

Applicants: ISO New England Inc., Central Maine Power Company.

Description: Compliance filing: Central Maine Power Company submits tariff filing per 35: Supplement to Compliance Filing to Schedule 21–CMP to be effective N/A.

Filed Date: 4/15/22.

Accession Number: 20220415–5139.

Comment Date: 5 p.m. ET 5/6/22.

Docket Numbers: ER22–1641–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: 2022 Amended LGIA Dracker Solar Project TOT276 (SA97) to be effective 6/14/2022.

Filed Date: 4/14/22.

Accession Number: 20220414–5227.

Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–1642–000.

Applicants: Associated Electric Cooperative, Inc.

Description: Renewed Request for Waiver of Tariff Provisions of Associated Electric Cooperative, Inc.

Filed Date: 4/14/22.

Accession Number: 20220414–5265.

Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–1643–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: First Revised ISA No. 6100; Queue No. AE2–112/AF1–036 to be effective 3/16/2022.

Filed Date: 4/15/22.

Accession Number: 20220415–5068.

Comment Date: 5 p.m. ET 5/6/22.

Docket Numbers: ER22–1644–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 6426; Queue No. AD1–105 to be effective 3/18/2022.

Filed Date: 4/15/22.

Accession Number: 20220415–5087

Comment Date: 5 p.m. ET 5/6/22.

Docket Numbers: ER22–1645–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: E&P Proforma Letter Agreement WDT to be effective 6/15/2022.
Filed Date: 4/15/22.
Accession Number: 20220415–5126.
Comment Date: 5 p.m. ET 5/6/22.
Docket Numbers: ER22–1646–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: WPA For Shelter Cove Solar Study WDT SA 382 to be effective 6/15/2022.
Filed Date: 4/15/22.
Accession Number: 20220415–5134.
Comment Date: 5 p.m. ET 5/6/22.
Docket Numbers: ER22–1647–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Tippsol (Tipperary Solar) LGIA Termination Filing to be effective 4/15/2022.
Filed Date: 4/15/22.
Accession Number: 20220415–5138.
Comment Date: 5 p.m. ET 5/6/22.
Docket Numbers: ER22–1648–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: E&P Proforma Letter Agreement TO to be effective 6/15/2022.
Filed Date: 4/15/22.
Accession Number: 20220415–5147.
Comment Date: 5 p.m. ET 5/6/22.
Docket Numbers: ER22–1649–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6388; Queue No. AG1–397 to be effective 3/16/2022.
Filed Date: 4/15/22.
Accession Number: 20220415–5154.
Comment Date: 5 p.m. ET 5/6/22.
Docket Numbers: ER22–1651–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: OATT Formula Rate—Schedule 10 Trans System Loss Factor June 2022 to be effective 6/1/2022.
Filed Date: 4/15/22.
Accession Number: 20220415–5172.
Comment Date: 5 p.m. ET 5/6/22.
Docket Numbers: ER22–1652–000.
Applicants: Energy Prepay I, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 4/16/2022.
Filed Date: 4/15/22.
Accession Number: 20220415–5180.
Comment Date: 5 p.m. ET 5/6/22.
Docket Numbers: ER22–1653–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: Tri-State Master Installation, O&M Agmt for Metering (Rev 4) to be effective 6/15/2022.
Filed Date: 4/15/22.
Accession Number: 20220415–5202.
Comment Date: 5 p.m. ET 5/6/22.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM22–11–000.
Applicants: Wisconsin Public Service Corporation.
Description: Application of Wisconsin Public Service Cooperation to Terminate Its Mandatory Purchase Obligation under the Public Utility Regulatory Policies Act of 1978.
Filed Date: 4/14/22.
Accession Number: 20220414–5261.
Comment Date: 5 p.m. ET 5/12/22.

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: *https://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 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08551 Filed 4–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6096–013]

O'Connell Energy Group, Mini-Watt Hydroelectric LLC; Notice of Transfer of Exemption

1. On February 18, 2022, as supplemented on February 23, 2022, O'Connell Energy Group, exemptee for the 495-Kilowatt New Home Dam Hydroelectric Project No. 6096, filed a letter notifying the Commission that the project was transferred from O'Connell Energy Group to Mini-Watt Hydroelectric LLC. The exemption from licensing was originally issued on December 28, 1984.[1] The project is located on the Millers River in Franklin County, Massachusetts. The transfer of an exemption does not require Commission approval.

2. Mini-Watt Hydroelectric LLC is now the exemptee of the New Dam Hydroelectric Project No. 6096. All correspondence must be forwarded to: Justin D. Ahmann, Chief Operating Officer, 75 Somers Rd., Somers, MT 59932, Phone: 712–790–3145, Email: *justin@apec-mt.com.*

Dated: April 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08593 Filed 4–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

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

Filings Instituting Proceedings

Docket Numbers: RP22–820–000.
Applicants: Southern Company Services, Inc., Florida Power & Light Company.
Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Southern Company Services, Inc. et al.
Filed Date: 4/13/22.
Accession Number: 20220413–5238.
Comment Date: 5 p.m. ET 4/25/22.

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.

Filings in Existing Proceedings

Docket Numbers: RP21–1187–000.
Applicants: Eastern Gas Transmission and Storage, Inc.
Description: Report Filing: EGTS—Rate Case 45-Day Update Filing to be effective N/A.
Filed Date: 4/14/22.
Accession Number: 20220414–5120.
Comment Date: 5 p.m. ET 4/26/22.
Docket Numbers: RP22–800–001.

[1] *Mini-Watt Electric Company,* 29 FERC ¶ 61,356 (1984). Subsequently, on November 16, 1994, the project was transferred to *O'Connell Energy Group.* (P–6096–003).

Applicants: Columbia Gas Transmission, LLC.

Description: Tariff Amendment: Errata to Colonial and Vitol Agmt Filing—Metadata Update to be effective 4/1/2022.

Filed Date: 4/14/22.

Accession Number: 20220414–5204.

Comment Date: 5 p.m. ET 4/26/22.

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

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

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

Dated: April 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08550 Filed 4–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP18–549–001 CP22–162–000]

Notice of Application for Limited Amendment to Abandonment Authorization; Equitrans, L.P.

Take notice that on April 12, 2022, Equitrans, L.P. (Equitrans), 2200 Energy Drive, Canonsburg, PA 15317, filed in the above referenced dockets, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a limited amendment to the existing abandonment authorization issued by the Commission on March 20, 2019 in Docket No. CP18–549–000. Those actions authorized Equitrans to abandon a series of eighteen injection and withdrawal (I/W) wells in Swarts Complex by sale, abandon the associated well lines in place, and abandon any associated appurtenant facilities. The facilities are located in Greene County, Pennsylvania. Since the issuance of the Abandonment Authorization, Equitrans has abandoned four of the originally authorized eighteen injection/withdrawal wells by sale to CONSOL Pennsylvania Coal Company LLC, CONSOL Mining Company LLC, CNX Gas Company LLC (collectively, CONSOL): 603777 (abandoned 2019); 603628 (abandoned 2020); 603785 (abandoned 2021); and 603626 (abandoned 2021).

The Pennsylvania Department of Environmental Protection's (PADEP) mine proximity setback regulation requires wells within 2,000 feet of coal mining activities to be plugged/abandoned or reconditioned. Equitrans states that due to further compliance with the PADEP's regulations, it now proposes to perform the plugging and abandonment of five of the remaining fourteen wells itself rather than transferring those wells and that function to CONSOL. In this amendment, Equitrans now proposes to plug and abandon five injection and withdrawal wells in Equitrans' Swarts Storage Field; numbers: 603791, 603792, 603793, 603795 and 603797, as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this filing should be directed to Matthew Eggerding, Assistant General Counsel, at Equitrans, L.P., 2200 Energy Drive, Canonsburg, PA 15317; by phone at (412) 553–5786; or by email to *Meggerding@equitransmidstream.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on May 6, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is May 6, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders

[1] 18 CFR (Code of Federal Regulations) § 157.9.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is May 6, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 6, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–162–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''.

The Commission's eFiling staff are available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP22–162–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail at: Matthew Eggerding, Assistant General Counsel, at Equitrans, L.P., 2200 Energy Drive, Canonsburg, PA 15317 or email (with a link to the document) at: *Meggerding@equitransmidstream.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on May 6, 2022.

Dated: April 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08553 Filed 4–21–22; 8:45 am]

BILLING CODE 6717–01–P

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

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

Filings Instituting Proceedings

Docket Numbers: RP22–821–000.

Applicants: Centra Pipelines Minnesota Inc.

Description: Section 4(d) Rate Filing: Updated Index of Shippers Apr 2022 to be effective 4/18/2022.

Filed Date: 4/18/22.

Accession Number: 20220418–5188.

Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: RP22–822–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Section 4(d) Rate Filing: Negotiated Rates—Maine to Emera Release to be effective 4/15/2022.

Filed Date: 4/18/22.

Accession Number: 20220418–5198.

Comment Date: 5 p.m. ET 5/2/22.

Docket Numbers: RP22–823–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Compliance filing: Pre-Filing Settlement Associated with Docket No. RP17–972 to be effective 12/31/9998.

Filed Date: 4/18/22.

Accession Number: 20220418–5245.

Comment Date: 5 p.m. ET 5/2/22.

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

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

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, service, and qualifying facilities filings can be found at: *https://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 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08591 Filed 4–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD22–5–000]

City of Portland, Oregon; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On April 12, 2022, as supplemented on April 13, 2022, the City of Portland, Oregon, through its Water Bureau, filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Washington Park Reservoir Hydroelectric Project would have an installed capacity of 30 kilowatts (kW), and would be located along an existing 24-inch pipeline at the applicant's Washington Park Reservoir in Portland, Multnomah County, Oregon.

Applicant Contact: Susan Priddy, InPipe Energy, 920 SE 6th Ave 12th Floor, Portland, OR 97204, 503–380–8487, *Susan@inpipeenergy.com.*

FERC Contact: Christopher Chaney, 202–502–6778, *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) One 30 kW turbine/generator unit; (2) 10-inch-diameter intake and discharge pipes; and (3) appurtenant facilities. The proposed project would have an estimated annual generation of approximately 77 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Washington Park Reservoir Hydroelectric Project will not alter the primary purpose of the conduit, which is to transport water for municipal use. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may send a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Locations of Notice of Intent: The Commission provides all interested

[1] 18 CFR 385.2001–2005 (2021).

persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (*i.e.,* CD22–5) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. Copies of the notice of intent can be obtained directly from the applicant. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: April 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08552 Filed 4–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4334–017]

EONY Generation Limited; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 4334–017.

c. *Date Filed:* January 28, 2021.

d. *Applicant:* EONY Generation Limited.

e. *Name of Project:* Philadelphia Hydroelectric Project.

f. *Location:* The project is located on the Indian River and Black Creek, in the Village of Philadelphia in Jefferson County, New York. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Franz Kropp, Director, Generation, EONY, 7659 Lyonsdale Road, Lyons Falls, NY 13368; (613) 225–0418, ext. 7498. Murray Hall, Manager, Generation, EONY, 7659 Lyonsdale Road, Lyons Falls, NY 13368; (613) 382–7312.

i. *FERC Contact:* Emily Carter at (202) 502–6512, or *Emily.Carter@ferc.gov.*

j. *Deadline for filing scoping comments:* May 18, 2022.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *https://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy via U.S. Postal Service to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Philadelphia Hydroelectric Project, P–4334–017.

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

k. This application is not ready for environmental analysis at this time.

l. The Philadelphia Project consists of the following existing facilities: (1) A 65-acre reservoir at a normal maximum water surface elevation of 475.4 feet; [1] (2) two concrete dams joined by an island and designated as the east diversion dam, which is 60 feet long and 2 to 3 feet high with a crest elevation of 474.4 feet, and topped with 1.2-foot-high flashboards,[2] and the west diversion dam, which has two sections totaling approximately 30 feet long and 10.4 feet high with a crest elevation of 475.4 feet; (3) a non-overflow section that includes a reinforced concrete intake structure; (4) a 377-foot-long, 9.5-foot-diameter concrete penstock; (5) a 54.5-foot-long by 30-foot-wide reinforced concrete powerhouse; (6) one 3.645-megawatt horizontal Kaplan-type turbine-generator unit; (7) trash racks with 2.5-inch clear spacing; (8) a 4,160-volt, approximately 50-foot-long buried transmission line; (9) a switchyard; and (10) appurtenant facilities.

[1] All elevations are in National Geodetic Vertical Datum of 1929 (NGVD29).

[2] The flashboards are designed to fail when overtopped by 2 feet of water.

EONY operates the project in run-of-river mode. The generating unit can be operated in either manual or automatic control mode. The project is normally operated remotely (unmanned) in automatic mode. In automatic control mode, the unit is started, synchronized, loaded, unloaded and stopped automatically to maintain the headwater level. The headwater and tailwater levels are recorded using water level pressure transducers.

The maximum hydraulic capacity of the project is 845 cubic feet per second (cfs). Based on the U.S. Geological Survey StreamStats program's annual flow duration data, this flow is equaled or exceeded approximately 9% of the time on an annual basis. The minimum hydraulic capacity is approximately 120 cfs. A continuous minimum flow of 20 cfs or inflow to the project, whichever is less, is passed into the project's bypassed reach. This flow consists of water provided through the flashboard openings on the east dam. The Philadelphia Project generated about 10,092,492 kilowatt-hours for the period from 2016 to 2020.

m. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* scoping document) via the internet through the Commission's Home Page (*https://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document (P–4334). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

n. You may also register online at *https://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process.

Commission staff will prepare either an environmental assessment (EA) or an Environmental Impact Statement (EIS) that describes and evaluates the probable effects, if any, of the licensee's proposed action and alternatives. The EA or EIS will consider environmental impacts and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission prepares an EA or an EIS. At this time,

we do not anticipate holding on-site scoping meetings. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued April 18, 2022.

Copies of SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: April 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08595 Filed 4–21–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9743–01–OAR]

Announcing Upcoming Meeting of Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency (EPA) announces an upcoming meeting of the Mobile Sources Technical Review Subcommittee (MSTRS), which is a subcommittee under the Clean Air Act Advisory Committee (CAAAC). This is a virtual meeting and open to the public. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. MSTRS listserv subscribers will receive notification when the agenda is available on the Subcommittee website. To subscribe to the MSTRS listserv, send an email to *MSTRS@epa.gov.*

DATES: EPA will hold a virtual public meeting on Wednesday May 25, 2022 from 10:30 a.m. to 5:00 p.m. Eastern Daylight Time (EDT). Please monitor the website *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac* for any changes to meeting logistics. The final meeting agenda will be posted on the website.

ADDRESSES: For information on the public meeting or to register to attend, please contact *MSTRS@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to attend the meeting or provide comments should express this intent by emailing *MSTRS@epa.gov* no later than Wednesday May 11, 2022. Further information concerning this public meeting and general information concerning the MSTRS can be found at: *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.* Other MSTRS inquiries can be directed to Julia Burch, the Designated Federal Officer for MSTRS, Office of Transportation and Air Quality, at 202–564–0961 or *burch.julia@epa.gov.*

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from its workgroups as well as updates and announcements on Office of Transportation and Air Quality activities of general interest to attendees.

Participation in virtual public meetings. The virtual public meeting will provide interested parties the opportunity to participate in this Federal Advisory Committee meeting.

EPA is asking all meeting attendees, even those who do not intend to speak, to register for the meeting by sending an email to the address listed in the **FOR FURTHER INFORMATION CONTACT** section above, by Wednesday May 11, 2022. This will help EPA ensure that sufficient participation capacity will be available.

Please note that any updates made to any aspect of the meeting logistics, including potential additional sessions, will be posted online at *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.* While EPA expects the meeting to go forward as set forth above, please monitor the website for any updates.

For individuals with disabilities: For information on access or services for individuals with disabilities, please email *MSTRS@epa.gov.* To request accommodate of a disability, please email *MSTRS@epa.gov,* preferably at least 10 business days prior to the meeting, to give EPA as much time as possible to process your request.

Julia Burch,

Designated Federal Officer, Mobile Source Technical Review Subcommittee, Office of Transportation and Air Quality.

[FR Doc. 2022–08650 Filed 4–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0132; FRL–9411–07–OCSPP]

Certain New Chemicals; Receipt and Status Information for March 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 03/01/2022 to 03/31/2022.

DATES: Comments identified by the specific case number provided in this document must be received on or before May 23, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0132, and the specific case number for the chemical substance related to your comment, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 03/01/2022 to 03/31/2022. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *https://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the

potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 03/01/2022 TO 03/31/2022

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–21–0077A	4	02/26/2022	CBI	(G) battery additive	(S) Tinci_PMN3.
P–21–0090A	5	03/07/2022	CBI	(G) Component in paving formulations	(G) Lignin, modified, reaction products with alkylamine by-products.
P–21–0189A	3	03/01/2022	Renewable Energy Group	(S) Feedstock used in the production of biomass based diesel.	(S) Fats and Glyceridic oils, algae.
P–21–0201A	11	03/04/2022	The Lewis Chemical Company.	(S) The intention is for this product to be used as an offset to N,N,N′,N′,N″-Pentamethyl-N-tallow alkyl1,3-propanediammonium chloride (CAS #68607–29–4) in a cationic latex asphalt emulsion formulation.	(S) 1,3-Propanediaminium, 2-hydroxy-N1,N1,N1,N3,N3-pentamethyl-N3-octadecen-1-yl, chloride (1:2);(S) 1,3-Propanediaminium, 2-hydroxy-N1,N1,N1,N3,N3-pentamethyl-N3-octadecyl-, chloride (1:2);(S) 1,3-Propanediaminium, 2-hydroxy-N1,N1,N1,N3,N3-pentamethyl-N3-tetradecyl-, chloride (1:2);(S) 1,3-Propanediaminium, N-hexadecyl-2-hydroxy-N,N,N′,N′,N′-pentamethyl-, dichloride (2Cl).
P–22–0011A	3	03/29/2022	Lord Corporation	(G) Functionalized rubber in resin side of two component acrylic, epoxy modified acrylic.	(G) Alkadiene, homopolymer, hydroxy-terminated, bis[N-[2-[(1-oxo-2-propen-1-yl)oxylethyl]carbamates].
P–22–0032A	2	02/28/2022	CBI	(S) Reactive polymer for use in adhesives and sealants.	(G) Isocyanic acid, polymethylenepolyphenylene ester, polymer with a-hydro-w-hydroxypoly[oxy(alkanediyl)], 1,1′-methylenebis[4-isocyanatobenzene] and a-alkane[w-hydroxypoly[oxy(alkanediyl)]].
P–22–0038	3	03/11/2022	CBI	(G) Additive	(G) Siloxanes and Silicones, di-Me, mixed (polyhydro-substituted heterocyclic) alkyl group- and [(polyalkylsilyl)substituted]-terminated.
P–22–0043	2	03/11/2022	CBI	(G) Intermediate	(G) Fatty acids, hydroxyethoxy ethyl esters.
P–22–0044A	2	03/15/2022	CBI	(G) Site Limited Intermediate	(G) Silica gel, reaction products with alkyl metal salt.
P–22–0045A	2	02/28/2022	AkzoNobel	(G) Polymer used in the manufacture of paint.	(G) Fatty acids, polymer with modified benzofuran-1,3-dione, pentaerythritol and aromatic acid anhydride.
P–22–0046	4	03/04/2022	CBI	(S) Food Coating agent for fruits, vegetables, meats and fish used by food processing/packing companies. Industrial Applications including but not limited to fiber optics, and micro-circuits, R&D development.	(S) Fibroins.
P–22–0049	3	03/08/2022	Huntsman International, LLC.	(S) Coatings for oil and gas, power, chemical/petrochemical industries. OEM coatings, Coatings used in manufacturing, Coatings in wastewater applications.	(G) aryl, polymer with formaldehyde, glycidyl ether, reaction products with amino alkyl-alkane diamine, cyclohexanediamine and alkylene [alkylcyclohexanamine].
P–22–0050	2	03/23/2022	CBI	(G) Lubricant	(G) Alkene, alkoxy-, polymer with alkoxyalkene.
P–22–0051	2	03/08/2022	CBI	(G) Lubricant and Fuel additive	(G) 2,5-Furandione, dihydro-, monopolyisobutylene derivs., reaction products with substituted alkylamine.
P–22–0052	1	03/08/2022	CBI	(G) Fuel Additive	(G) Alkylated succinimide dimer.
P–22–0052A	2	03/29/2022	CBI	(G) Fuel Additive	(G) Alkylated succinimide dimer.
P–22–0052A	3	03/29/2022	CBI	(G) Fuel Additive	(G) Alkylated succinimide dimer.
P–22–0054	1	03/14/2022	CBI	(G) Additive for paint and coatings	(G) Graphene nanoplatelets.
P–22–0055	1	03/16/2022	CBI	(G) Photoacid generator (PAG) for use in electronics industry.	(G) Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt.
P–22–0056	2	03/17/2022	TIB Chemicals Corporation	(S) Catalyst for use in sealants and adhesives.	(S) Tin, dioctylbis(2,4-pentanedionato-.kappa.O2,.kappa.O4)-.
P–22–0057	1	03/21/2022	CBI	(G) Additive in home care products	(G) Polysaccharide, polymer with 2-propenoic acid, sodium salt.
SN–21–0003A	3	03/15/2022	Norquay Technology, Inc	(G) Intermediate	(S) 1,1′-Biphenyl, 4,4′-dibromo-.
SN–21–0004A	2	02/26/2022	CBI	(G) Monomer	(S) 2-Propenoic acid, 1,1′-(3-methyl-1,5-pentanediyl) ester.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 03/01/2022 TO 03/31/2022—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
SN–22–0003	2	02/04/2022	CBI	(G) Use as an ingredient in fragrances ...	(S) 1,3-Butanediol, (3R)-.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90 day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 03/01/2022 TO 03/31/2022

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–15–0510	03/14/2022	03/14/2022	N	(S) Tin, bis[[1,1′-(butylimino-n)bis[2-propanolato-o]](2-)]-, (oc-6-21′)-.
P–18–0043	03/07/2022	02/12/2022	N	(S) 1,4-benzenedicarboxylic acid, 1,4-dipentyl ester, branched and linear.
P–19–0003	03/03/2022	02/25/2022	N	(S) 1,3-isobenzofurandione, 4,4′-[[1,1′-biphenyl]-4,4′-diylbis(oxy)]bis-.
P–19–0004	03/29/2022	03/16/2022	N	(S) [1 ,3-isobenzofurandione, 4,4′-[[1,1″-biphenyl]-4,4′-diylbis(oxy)]bis- ,polymer with 1,3-benzenediamine and 4,4′-sulfonylbis[benzenamine], reaction products with phthalic anhydride.
P–20–0037	03/14/2022	03/09/2022	N	(S) Lithium-6 chloride.
P–21–0128	03/24/2022	03/05/2022	N	(S) Fatty acids, c8-18 and c18-unsatd., mixed esters with c18-unsatd. fatty acid dimers, decanoic acid, octanoic acid and trimethylolpropane.
P–21–0200	03/10/2022	02/26/2022	N	(G) Saturated and unsaturated hydrocarbon waxes, oxidized, polymers with alkenoic acid, alkyl alkanoate, alkenedioic acid, polyalkylene glycol ether with substituted carbomonocycle (alkylidene)bis-, polyalkylene glycol ether with substituted carbomonocycle (alkylidene)bis-, substituted carbomonocycle, disubstituted carbomonocycle and substituted heteropolycycle, alkyl peroxide-initiated.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 03/01/2022 TO 03/31/2022

Case No.	Received date	Type of test information	Chemical substance
P–14–0712	03/04/2022	Polychlorinated Dibenzodioxins and Polychlorinated dibenzofurans Testing.	(S) Waste plastics, pyrolyzed, C5–55 fraction.
P–16–0543	03/25/2022	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P–18–0016	03/02/2022	Water Solubility Testing	(G) Aromatic sulfonium tricyclo fluoroalkyl sulfonic acid salt.
P–20–0005	03/25/2022	Chromosomal Aberration Study	(G) Modified graphene.
P–20–0005	03/25/2022	Micronucleus Study	(G) Modified graphene.
P–20–0042	03/02/2022	Water Solubility Testing	(G) Sulfonium, trisaryl-, 7,7-dialkyl-2-heteropolycyclic -1-alkanesulfonate (1:1).

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: April 15, 2022.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2022–08588 Filed 4–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9770–01–OW]

Notice of Public Webinars of the Environmental Financial Advisory Board (EFAB) via Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public webinars.

SUMMARY: The Environmental Protection Agency (EPA)'s Environmental Financial Advisory Board (EFAB) will hold public webinars for the second and third installments of a Pollution Prevention Finance Forum to support the EFAB Pollution Prevention workgroup and its charge (*https://www.epa.gov/waterfinancecenter/efab#meeting*). Due to interest from the full Board, these webinars are being opened to the public.

DATES: The second webinar will be held on May 10, 2022, from 12 p.m. to 1:30 p.m. (Eastern Time). The third webinar will be held on June 22, 2022, from 12 p.m. to 1:30 p.m. (Eastern Time).

ADDRESSES: The webinars will be conducted via teleconference only and are open to the public. Interested persons must register in advance at the weblinks below to access the webinars.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants information about the webinars may contact Tara Johnson via telephone/voicemail at (202) 564–6186 or email to *efab@epa.gov.* General information concerning the EFAB is available at *https://www.epa.gov/waterfinancecenter/efab.*

SUPPLEMENTARY INFORMATION:

Background: The EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, to provide advice and recommendations to EPA on innovative approaches to funding environmental programs, projects, and activities. Administrative support for the EFAB is provided by the Water Infrastructure and Resiliency Finance Center within EPA's Office of Water. Pursuant to FACA and EPA policy, notice is hereby given that the EFAB will hold public webinars for the following purpose:

The Pollution Prevention Finance Forum is a series of webinars that explore opportunities and challenges in financing sustainability, with an initial focus on advancing opportunities for small and medium-sized manufacturing businesses. The purpose of the second Forum webinar is to further assess the types of financial tools and models that are or could be made available for pollution prevention (P2) projects and are relevant to small and medium-sized businesses and manufacturers. The third Forum webinar will assess partnership models and explore potential partnership opportunities and distribution networks for P2 projects. P2, also known as source reduction, is any practice that reduces, eliminates, or prevents pollution at its source prior to recycling, treatment, or disposal. More information can be found at *https://www.epa.gov/p2.*

The webinars are open to the public, but no oral public comments will be accepted during the webinars. Written public comments relating to the Forum and the EFAB's Pollution Prevention workgroup should be provided in accordance with the instructions below on written statements.

Registration for the Meeting: Register for the webinars at *https://www.zoomgov.com/webinar/register/WN_7izDAZPZT8W4kfhhi_fh0A* (Webinar 2) and *https://www.zoomgov.com/webinar/register/WN_HA5hA8RbQ9e6ZPgyk25VtA* (Webinar 3).

Availability of Meeting Materials: Webinar materials (including agendas and background materials) will be available on EPA's website at *https://www.epa.gov/waterfinancecenter/efab#meeting.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees provide independent advice to EPA. Members of the public can submit comments on matters being considered by the EFAB for consideration by members as they develop their advice and recommendations to EPA.

Written Statements: Written statements and questions should be received by May 5, 2022, for Webinar 2 and June 17, 2022, for Webinar 3, so that the information can be made available to the EFAB for its consideration. Written statements and questions should be sent via email to *efab@epa.gov.* Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the EFAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities or to request accommodations for a disability, please register for the webinar(s) and list any special requirements or accommodations needed on the registration form at least 10 business days prior to the meeting to allow as much time as possible to process your request.

Dated: April 18, 2022.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2022–08641 Filed 4–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–013]

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 11, 2022 10 a.m. EST

Through April 18, 2022 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://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20220054, Draft, FERC, KY, Texas Gas Henderson County Expansion Project, *Comment Period Ends:* 06/06/2022, *Contact:* Office of External Affairs 866–208–3372.

EIS No. 20220055, Final, USFS, OR, Cliff Knox Project, *Review Period Ends:* 06/13/2022, *Contact:* Lori Bailey 541–573–4366.

EIS No. 20220056, Draft, TVA, TN, Moore County Solar, *Comment Period Ends:* 06/06/2022, *Contact:* Ashley Pilakowski 865–632–2256.

Dated: April 18, 2022.

Marthea Rountree,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–08621 Filed 4–21–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of an Open Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND DATE: Thursday, April 28, 2022, at 10:15 a.m.

PLACE: The meeting will be held via teleconference.

STATUS: The meeting will be open to public observation for Item Number 1.

MATTERS TO BE CONSIDERED: Extension and Termination of COVID–19 Relief Measures.

CONTACT PERSON FOR MORE INFORMATION: Joyce B. Stone (202–257–4086). Members of the public who wish to attend the meeting via teleconference must register via using the link below by noon Wednesday April 27, 2022. After completing the registration, Individuals will receive a confirmation email containing information about joining the webinar. *https://teams.microsoft.com/registration/PAFTuZHHMk2Zb1GDkIVFJw,pHLqbjVTrkuy_9KepKN6dQ,MFtnLzltSEGI6EQECdI5iQ,MT1AT3hlIkOnOgl65cOcwg,KoZ0L6eBREKJFAYRixuxVw,suD8J2fVd06L4Yt3PC3QiA?mode=read&tenantId=b953013c-c791-4d32-996f-518390854527.*

Bassam Doughman,

IT Specialist.

[FR Doc. 2022–08747 Filed 4–20–22; 4:15 pm]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 82662]

Open Commission Meeting Thursday, April 21, 2022

April 14, 2022.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 21, 2022, which is scheduled to commence at 10:30 a.m. Due to the current COVID–19 pandemic and related agency telework and headquarters access policies, this meeting will be in an electronic format and will be open to the public only on the internet via live feed from the FCC's web page at *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	OFFICE OF ENGINEERING & TECHNOLOGY.	*Title:* Improving Receiver Performance (ET Docket No. 22–137). *Summary:* The Commission will consider a Notice of Inquiry to promote more efficient use of spectrum through improved receiver interference immunity performance, thereby facilitating the introduction of new and innovative services.
2	PUBLIC SAFETY & HOMELAND SECURITY.	*Title:* Wireless Emergency Alerts (PS Docket No. 15–91); Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System (PS Docket No. 15–94). *Summary:* The Commission will consider a Further Notice of Proposed Rulemaking seeking comment on proposals to strengthen the effectiveness of Wireless Emergency Alerts, including through public reporting on the reliability, speed, and accuracy of these alerts.
3	MEDIA	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter.
4	MEDIA	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter.
5	ENFORCEMENT	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.

* * * * *

The meeting will be webcast with open captioning at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530. Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–08549 Filed 4–21–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0799; FR ID 82874]

Information Collection Requirement Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that

does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 21, 2022.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0799.

Title: FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

Form No.: FCC Form 602.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; and State, Local or Tribal government.

Number of Respondents: 4,115.

Estimated Time per Response: 0.5–1.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of this information is contained in Sections 154(i), 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended. The statutory authority for this collection of this information is contained in Sections 154(i), 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended.

Total Annual Burden: 5,217 hours.

Total Annual Cost: $762,300.

Needs and Uses: The FCC Form 602 is necessary to obtain the identity of the filer and to elicit information required by Section 1.2112 of the Commission's rules regarding: (1) Persons or entities holding a 10 percent or greater direct or indirect ownership interest or any general partners in a general partnership holding a direct or indirect ownership interest in the applicant (''Disclosable Interest Holders''); and (2) All FCC-regulated entities in which the filer or any of its Disclosable Interest Holders owns a 10 percent or greater interest. The data collected on the FCC Form 602 includes the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires that entities filing with the Commission use an FRN. The FCC Form 602 was designed for, and must be filed electronically by, all licensees that hold licenses in auctionable services.

The FCC Form 602 is comprised of the Main Form containing information regarding the filer and the Schedule A is used to collect ownership data pertaining to the Disclosable Interest Holder(s). Each Disclosable Interest Holder will have a separate Schedule A. Thus, a filer will submit its FCC Form 602 with multiple copies of Schedule A, as necessary, to list each Disclosable Interest Holder and associated information.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–08545 Filed 4–21–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0178; FR ID 82868]

Information Collection Requirement Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 21, 2022.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0178.

Title: Section 73.1560, Operating Power and Mode Tolerances.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 80 respondents; 80 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 80 hours.

Total Annual Cost: $20,000.

Needs and Uses: The information collection requirements contained in 47 CFR 73.1560(d) require that licensees of AM, FM or TV stations file a notification with the FCC when operation at reduced power will exceed ten consecutive days and upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of authorized power within a 30-day period, an informal written request must be made for any additional time as may be necessary to restore normal operations.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–08546 Filed 4–21–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request [OMB No. 3064–0152; –0190]

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0152 and—0190). The notice of the proposed renewal for these information collections was previously published in the **Federal Register** on February 9, 2022, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before May 23, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

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: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* ID Theft Red Flags.

OMB Number: 3064–0152.

Form Number: None.

Affected Public: Insured state nonmember banks.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0152]

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
FACT Act Section 114: Identity Theft Prevention						
Program Establishment 12 CFR 334.90(d); 12 CFR 334.91(c).	Recordkeeping (Mandatory)	Annual	8	1	40	320
Program Operations 12 CFR 334.90(c), (e); 12 CFR 334.91(c).	Recordkeeping (Mandatory)	Annual	3,171	1	16	50,832
Section 114 Hours Subtotal						51,152
FACT Act Section 315: Address Discrepancy Program						
Program Establishment 12 CFR 334.82(c), (d)	Recordkeeping (Mandatory)	Annual	8	1	40	320
Program Operations 12 CFR 334.82(c), (d)	Recordkeeping (Mandatory)	Annual	3,111	1	4	12,444
Specific Incident Responses 12 CFR 334.82(d)(1–3)	Disclosures (Mandatory)	On occasion	3,111	17.1	0.1667	8,868
Section 315 Hours Subtotal						21,632
Total Annual Burden (Hours)						72,784

Source: FDIC.

General Description of Collection: The regulation containing this information collection requirement is 12 CFR part 334, which implements sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159 (2003). FACT Act Section 114: Section 114 requires the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the FDIC (the Agencies) to jointly propose guidelines for financial institutions and creditors identifying patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. In addition, each financial institution and creditor is required to establish reasonable policies and procedures to address the risk of identity theft that incorporate the guidelines. Credit card and debit card issuers must develop policies and procedures to assess the validity of a request for a change of address under certain circumstances. The information collections pursuant to section 114 require each financial institution and creditor to create an Identity Theft Prevention Program and report to the board of directors, a committee thereof, or senior management at least annually on compliance with the proposed regulations. In addition, staff must be trained to carry out the program. Each credit and debit card issuer is required to establish policies and procedures to assess the validity of a change of address request. The card issuer must notify the cardholder or use another means to assess the validity of the change of address. FACT Act Section 315: Section 315 requires the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when such a user receives a notice of address discrepancy from a consumer reporting agencies. Part 334 provides such guidance. Each user of consumer reports must develop reasonable policies and procedures that it will follow when it receives a notice of address discrepancy from a consumer

reporting agency. A user of consumer reports must furnish an address that the user has reasonably confirmed to be accurate to the consumer reporting agency from which it receives a notice of address discrepancy.

There is no change in the method or substance of the information collection. The total estimated annual burden hours have increased due to the inclusion of estimated program establishment costs for de novo institutions and the introduction of the costs of responses to specific address discrepancy incidents for newly established consumer accounts.

2. *Title:* Interagency Appraisal Complaint Form.

OMB Number: 3064–0190.

Form Numbers: None.

Affected Public: Individuals, financial institutions and other private sector entities.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0190]

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
Interagency Appraisal Complaint Form	Reporting (Voluntary)	On Occasion	116	1	0.5	58

Source: FDIC.

General Description of Collection: As provided in section 1473(p) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), on January 12, 2011, the Appraisal Subcommittee (ASC), of the Federal Financial Institutions Examination Council (FFIEC) determined that no national hotline existed to receive complaints of noncompliance with appraisal standards. A notice of that determination was published in the **Federal Register** on January 28, 2011 (76 FR 5161). As required by the Dodd-Frank Act, the ASC established a hotline to refer complaints to appropriate state and Federal regulators. For those instances where the ASC determines the FDIC, OCC, FRB, or NCUA is the appropriate regulator, the agencies developed the Interagency Appraisal Complaint Form as a means to efficiently collect necessary information. The Interagency Appraisal Complaint Form is designed to collect information necessary for one or more agencies to take further action on a complaint from an appraiser, other individual, financial institution, or other entities. The FDIC will use the information to take further action on the complaint to the extent it relates to an issue within its jurisdiction.

There is no change in the method or substance of the collection. The overall increase in burden hours (from 20 hours to 58 hours) is the result of a change in the agency's estimate of the number of annual responses based on a review of the actual number of complaints received over the last five years. In particular, the estimated number of respondents has increased from 40 to 116 while the estimated time per response and the frequency of response have remained the same.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on April 18, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–08556 Filed 4–21–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, April 28, 2022 at 10:00 a.m.

PLACE: Hybrid Meeting: 1050 First Street NE Washington, DC (12th floor) and Virtual.

Note: Due to the COVID–19 Pandemic, the FEC's Hearing Room remains closed to visitors for the near term as we implement procedures for the public to safely attend. If you would like to access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the virtual meeting, go to the Commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED: Draft Advisory Opinion 2022–02: Congressman W. Gregory Steube and Greg Steube for Congress; Management and Administrative Matters.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer. Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2022–08750 Filed 4–20–22; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's

Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 23, 2022.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Applications) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Origin Bancorp, Inc., Ruston, Louisiana;* to merge with BT Holdings, Inc., and thereby indirectly acquire BTH Bank National Association, both of Quitman, Texas.

Board of Governors of the Federal Reserve System, April 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–08637 Filed 4–21–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 9, 2022.

A. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of Banner Corporation, and thereby indirectly acquire voting shares of Banner Bank, both of Walla Walla, Washington.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Jonathan T. Damkroger and Miranda J. Hobelman, both of Lincoln, Nebraska;* to join the Wilber Co. Voting Trust Control Group, a group acting in concert, to retain voting shares of First State Holding Company (formerly known as Wilber Co.), and thereby indirectly retain voting shares of First State Bank Nebraska, both of Lincoln, Nebraska.

Board of Governors of the Federal Reserve System, April 19, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–08635 Filed 4–21–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026; Docket No. 2022–0053; Sequence No. 13]

Information Collection; Change Order Accounting and Notification of Changes

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on an extension concerning change order accounting and notification of changes. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through October 31, 2022. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by June 21, 2022.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0026, Change Order Accounting and Notification of Changes. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0026, Change Order Accounting and Notification of Changes.

B. Need and Uses

This justification supports extension of the expiration date of OMB Control No. 9000–0026. This clearance covers the information that contractors must submit to comply with the Federal Acquisition Regulation (FAR) part 43

requirements as stated in the following clauses:

a. 52.243–4, Changes. For acquisitions for dismantling, demolition, or removal of improvements; and fixed-price construction contracts that exceed the simplified acquisition threshold (SAT), the contractor must assert its right to an adjustment under this clause within 30 days after receipt of a written change order or the furnishing of a written notice, by submitting to the contracting officer a written statement describing the general nature and amount of proposal, unless this period is extended by the Government. The written notice covers any other written or oral order (which includes direction, instruction, interpretation, or determination) from the contracting officer that causes a change. The contractor gives the contracting officer written notice stating (1) the date, circumstances, and source of the order and (2) that the contractor regards the order as a change order. The statement of proposal for adjustment may be included in the written notice.

b. 52.243–6, Change Order Accounting. The contracting officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds $100,000. The contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The contractor shall maintain these accounts until the parties agree to an equitable adjustment or the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development (R&D) contracts of significant technical complexity, if numerous changes are anticipated, or construction contracts if deemed appropriate by the contracting officer.

c. 52.243–7, Notification of Changes. The clause is available for use primarily in negotiated R&D or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than $1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer. The contractor shall notify the Administrative Contracting Officer in writing if the contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the contractor regards as a change to the contract terms and conditions. This excludes changes identified as such in writing and signed by the contracting officer. On the basis of the most accurate information available to the contractor, the notice shall state—

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—

(i) What line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

Contracting officers use the notices and information provided by contractors in response to a change notice to negotiate an equitable adjustment under the contract that may result from the change order.

C. Annual Burden

Respondents & Recordkeepers: 2,611.

Total Annual Responses: 1,152.

Total Burden Hours: 9,238 (1,152 reporting hours + 8,086 recordkeeping hours).

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0026, Change Order Accounting and Notification of Changes.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–08548 Filed 4–21–22; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice–MRB–2022–01; Docket No. 2022–0002; Sequence No. 4]

Notice of Intent To Establish a Federal Advisory Committee and Call for Nominations

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) announces its intent to establish the GSA Acquisition Policy Federal Advisory Committee (hereinafter ''the Committee'' or ''the GAP FAC'').

DATES: We will consider nominations that are submitted via email or postmarked by May 23, 2022.

ADDRESSES: Please submit nominations to Boris Arratia, or Stephanie Hardison, General Services Administration, Office of Government-wide Policy 1800 F Street NW, Washington, DC 20405; or send by email to *gapfac@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Boris Arratia, Office of Government-wide Policy, 703–795–0816, or email: *boris.arratia@gsa.gov;* or Stephanie Hardison, Office of Government-wide Policy, 202–258–6823, or email: *stephanie.hardison@gsa.gov*.

SUPPLEMENTARY INFORMATION: The Administrator of the U.S. General Services Administration (GSA) intends to establish the GSA Acquisition Policy Federal Advisory Committee (GAP FAC) as a discretionary advisory committee under agency authority in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. app 2.

As America's buyer, GSA is uniquely positioned to enable a modern, accessible, and streamlined acquisition ecosystem and a robust marketplace connecting buyers to the suppliers and businesses that meet their mission needs. The GAP FAC will assist GSA in this endeavor through expert advice on a broad range of innovative solutions to acquisition policy, workforce and industry partnership challenges.

The GAP FAC will serve as an advisory body to GSA's Administrator on how GSA can use its acquisition tools and authorities to target the highest priority Federal acquisition challenges. The GAP FAC will advise GSA's Administrator on emerging acquisition issues, challenges, and opportunities to support its role as America's buyer. The initial focus for the GAP FAC will be on driving regulatory, policy, and process changes required to embed climate and sustainability considerations in Federal acquisition. This includes examining and recommending steps GSA can take to support its workforce and industry partners in ensuring climate and sustainability issues are fully considered in the acquisition process.

The GAP FAC shall be composed of no less than ten (10) and no more than thirty (30) Federal and non-Federal members, with expertise in either acquisition, climate, and sustainability, and/or expertise in the intersection of acquisition, climate, and sustainability. GSA is most interested in perspectives of small business, science, manufacturing, engineering, academia, technology, law, State and local governments, independent associations or councils, and other appropriate industry sectors along with perspectives across the US Government. GSA values opportunities to increase diversity, equity, inclusion and accessibility on its federal advisory committees.

Advisory Committee

The GAP FAC will operate in accordance with the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2). The GAP FAC will be solely advisory in nature. Consistent with FACA and its requirements, each meeting of the GAP FAC will be open to the public unless otherwise notified in accordance with the Government in the Sunshine Act. A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained for each meeting and made available for public inspection. All activities of the GAP FAC will be conducted in an open, transparent, and accessible manner.

The GAP FAC is expected to be a continuing entity with charter renewals every two years. The first meeting date and agenda topics will be announced in the **Federal Register** at least fifteen (15) days prior to the first meeting date. In addition, as needed, working groups or subcommittees will be established to facilitate the GAP FAC's work between meetings of the full committee. Meetings of the GAP FAC will be fully accessible to individuals with disabilities.

Members will be designated as Regular Government Employees (RGEs), Special Government Employees (SGEs), or Representative members as appropriate. GSA's Office of General Counsel will assist the Designated Federal Officer (DFO) to determine the advisory committee member designations. In general, SGEs are experts in their field who provide Federal advisory committees with their own best independent judgment based on their individual expertise.

Representatives are members selected to represent a specific point of view held by a particular group, organization, or association. Members who are full-time or permanent part-time Federal civilian officers or employees shall be appointed to serve as Regular Government Employee (RGE) members. In accordance with OMB Final Guidance published in the **Federal Register** on October 5, 2011 and revised on August 13, 2014, federally registered lobbyists may not serve on the Committee in an individual capacity to provide their own individual best judgment and expertise, such as SGEs and RGEs members. This ban does not apply to lobbyists appointed to provide the Committee with the views of a particular group, organization, or association, such as a representative member.

Member Nominations

GSA invites nominations to serve on the Committee in the following disciplines related to acquisition policy and sustainability: Acquisition, small business, science, manufacturing, policy, management, engineering, academia, technology, and law. GSA encourages nominees who have a strong background and expertise in the following disciplines to apply: Sustainability; acquisition; energy and the environment; public policy; environmental policy, management, and technology; economics; social and behavioral science; green jobs, community environmental health; ecosystem services; public transportation; environmental law; U.S. public procurement law; Federal Acquisition Regulations (FAR); logistics; and supply chain management.

In the selection of members for the advisory committee, GSA will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Membership will depend upon several factors, including: (i) The advisory committee's mission; (ii) The geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (iii) The types of specific perspectives required, for example, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (iv) The need to obtain divergent points of view on the issues before the advisory committee; and (v) The relevance of State, local, or tribal governments to the development of the advisory committee's recommendations.

Member Selection Criteria

The following selection criteria will be used to evaluate nominees:

Committee Members

(a) Educational background (*e.g.,* degree in business, economics, law, public policy, or engineering);

(b) Professional experiences and accomplishments (*e.g.,* projects, nature of work, or publications);

(c) Current employment and membership in associations or other activities (*e.g.,* manufacturers, academia, and civil society organizations); and

(d) Subject matter expertise in the key issue the GAP FAC is examining for the current period.

(e) Willingness to commit time to the Committee and demonstrated ability to work constructively and effectively on committees;

Committee Chair

- Demonstrated credentials and disciplinary expertise in the acquisition field;
- Willingness to commit substantial time to the Committee and demonstrated ability to work constructively and effectively on committees;
- Background and experience helping engage people from different backgrounds work towards common objectives;
- Demonstrated ability to assess and analyze policy challenges with objectivity and integrity;
- Excellent interpersonal, oral, and written communication skills; and
- Excellent leadership and consensus-building skills.

All members will be appointed by the GSA Administrator, who will also select the Chair from among the members. Members will serve one (1) to three (3) year terms.

Miscellaneous

The GAP FAC will meet approximately four times per year. Such meetings will be open to the public unless an appropriate authority determines, in accordance with the FACA, that a meeting shall be closed or

partially closed. The Committee will meet virtually with the potential exception of one in person meeting per year.

Committee members (including the Committee Chair) will not be compensated for their services and may be allowed travel expenses, including per diem, in accordance with 5 U.S.C. 5703. Regardless of the type of committee membership appointment, any travel expenses shall be paid at rates equivalent to that allowable to Federal employees.

Nomination Submissions

Any interested person and/or organization may nominate qualified individuals for membership. Individuals are also encouraged to self-nominate. The following items must be submitted in a nomination package:

(1) A letter of nomination stating the nominee's name and organizational affiliation(s), nominee's field of expertise, specific qualifications to serve on the Committee, and a brief statement of interest, including if the nominee is interested in serving as the Chair of the Committee;

(2) A professional resume or curriculum vitae (CV); and

(3) A short biography (no more than two paragraphs) describing the nominee's professional and educational qualifications, including a list of relevant activities and any current or previous service on advisory committees.

The letter of nomination, resume or CV, and a short biography should include the candidate's full name, address of the current organization, position title, email address, and daytime telephone number(s) of the nominee and nominator.

In preparing the letter of nomination, please describe how the nominee's background, knowledge, and experience will bring value to the work of the Committee and how these qualifications would contribute to the overall diversity of the Committee. Also, describe any previous involvement with GSA through employment, grant funding, and/or contracting sources, if applicable.

Nominations are due by May 23, 2022, and must be submitted via email to: *gapfac@gsa.gov.*

Boris Arratia,

Director, Regulatory Information Service Center, General Services Administration.

[FR Doc. 2022–08437 Filed 4–21–22; 8:45 am]

BILLING CODE 6820–61–P

OFFICE OF GOVERNMENT ETHICS

Privacy Act of 1974; System Records

AGENCY: Office of Government Ethics.

ACTION: Notice of a new system of records.

SUMMARY: The Office of Government Ethics (OGE) proposes to create a new system of records pursuant to the provisions of the Privacy Act of 1974. This system of records contains contact information of federal employees and members of the public collected and maintained for the purposes of conducting agency business.

DATES: This system of records will be effective on April 22, 2022, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by May 23, 2022.

ADDRESSES: Comments may be submitted to OGE, by the following methods:

Email: usoge@oge.gov (Include reference to ''OGE/INTERNAL–7 comment'' in the subject line of the message.).

Mail, Hand Delivery/Courier: Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Attention: Jennifer Matis, Associate Counsel, Washington, DC 20005–3917.

Instructions: Comments may be posted on OGE's website, *https://www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Jennifer Matis at the U.S. Office of Government Ethics; telephone: 202–482–9216; TTY: 800–877–8339; Email: *privacy@oge.gov.*

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is establishing a new system of records that includes contact information compiled in lists related to a specific event, initiative, project, or recruitment or outreach activity. The contact lists are used to facilitate outreach, respond to inquiries, distribute information, and permit other communications in furtherance of OGE's mission under the Ethics in Government Act.

SYSTEM NAME AND NUMBER:

OGE/INTERNAL–7, Outreach and Contact Lists.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Washington, DC 20005–3917. Records may also be kept in commercial third-party applications.

SYSTEM MANAGER(S):

Nicole Stein, Chief, Agency Assistance Branch, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005–3917.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. § 402 (Ethics in Government Act of 1978); 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

The purpose of the information in the system is to enable OGE to efficiently and effectively manage contact information to: (1) Assist OGE in the distribution of information to individuals who request it; (2) to maintain lists of media, affinity group, nongovernmental organization, Congressional, and/or other stakeholders for future communications; and (3) to correspond with individuals who voluntarily provide information to OGE through surveys, email, mail, or in person.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees in the executive branch, and/or members of the public who have communicated with OGE or with whom OGE wishes to communicate.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information included in the system of records may include: (1) Contact information such as names, home/work addresses, organizational/agency affiliations and addresses, phone numbers and emails addresses (both work and personal), and job titles; (2) information collected from individuals in response to surveys or as part of agency outreach initiatives; and (3) sign-in sheets or rosters compiled at meetings, summits, and events held at or hosted by OGE. The information may be maintained in a word processing or PDF document, on paper, as part of a spreadsheet, or in either an internal or third party application.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individual on whom the record is maintained or from publicly available sources such as organization websites.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the information maintained in this system is to communicate directly with the individuals whose information is contained in the system. These records and the information contained therein may also be used:

a. To disclose information to third party vendors and service providers (such as Mailchimp or GovDelivery) for the purpose of outreach or correspondence to stakeholders.

b. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

c. To disclose to contractors, grantees, volunteers, experts, students, and others performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government when necessary to accomplish an agency function.

d. To disclose information when OGE determines that the records are arguably relevant and necessary to a proceeding before a court, grand jury, or administrative or adjudicative body; or in a proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant and necessary to the proceeding.

e. To disclose information to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

f. To disclose information to appropriate agencies, entities, and persons when: (1) OGE suspects or has confirmed that there has been a breach of the system of records; (2) OGE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the agency (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 OGE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

g. To disclose information to another Federal agency or Federal entity, when OGE 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in paper and/or electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records may be retrieved by name or other data elements such as stakeholder category (*i.e.*, Congressional, Nonprofit Organization, Federal Agency).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with General Records Schedule 6.4, item 010, Public affairs-related routine operational records, the records are destroyed when 3 years old, or no longer needed, whichever is later.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records maintained on the OGE network, in OGE internal applications, or in third party applications are protected from unauthorized access through password identification procedures, limited access, and other system-based protection methods. Electronic records are also protected through administrative safeguards, such as OGE's Account Access Request Form (AARF) process, which is required for access to OGE systems, applications, and third party accounts. Paper records are protected through appropriate physical security measures.

RECORD ACCESS PROCEDURES:

Individuals requesting access to this system of records must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of records about themselves must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them must follow the procedures set forth in OGE's Privacy Act regulations at 5 CFR part 2606.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

None.

Approved: April 18, 2022.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2022–08558 Filed 4–21–22; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–IP22–001, Research on the Epidemiology, Prevention and Control of Influenza and Other Respiratory Viruses in India and RFA–IP22–004, US Platform to Measure Effectiveness of Seasonal Influenza, COVID–19 and other Respiratory Virus Vaccines for the Prevention of Acute Illness in Ambulatory Settings.

Dates: June 29–30, 2022.

Times: 10:00 a.m.–5:00 p.m., EDT.

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Square Boulevard, Atlanta, Georgia 30329–4027.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, 1600 Clifton Road NE, Mailstop US8–1, Atlanta, Georgia

30329–4027, (404) 718–8833, *GAnderson@cdc.gov*.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–08576 Filed 4–21–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Center for Preparedness and Response, (BSC, CPR)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, Center for Preparedness and Response, (BSC, CPR). This is a virtual meeting that is open to the public. The number of attendees is limited only by the number of internet conference accesses available, which is 500. Time will be available for public comment. Pre-registration is required by accessing the link in the addresses section.

DATES: The meeting will be held on June 1, 2022, from 1:00 p.m. to 5:00 p.m., EDT, and June 2, 2022, from 1:00 p.m. to 4:30 p.m., EDT.

ADDRESSES: Zoom Virtual Meeting. If you wish to attend the virtual meeting, please pre-register by accessing the link at: *https://cdc.zoomgov.com/webinar/register/WN_5nWhKDP1RZyYki-NOXjMBA*. Instructions to access the Zoom virtual meeting will be provided in the link following registration.

FOR FURTHER INFORMATION CONTACT: Dometa Ouisley, Office of Science and Public Health Practice, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop-H21–6, Atlanta, Georgia 30329–4027, Telephone: (404) 639–7450; Facsimile: (678) 669–1667; Email: *DOuisley@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Board is charged with providing advice and guidance to the Secretary, Department of Health and Human Services (HHS), the Assistant Secretary for Health (ASH), the Director, Centers for Disease Control and Prevention (CDC), and the Director, Center for Preparedness and Response (CPR), concerning strategies and goals for the programs and research within CPR, monitoring the overall strategic direction and focus of the CPR Divisions and Offices, and administration and oversight of peer review for CPR scientific programs. For additional information about the Board, please visit: *https://www.cdc.gov/cpr/bsc/index.htm*.

Matters To Be Considered: Day one the agenda will include: (1) CPR Division Updates; (2) COVID–19 Response Update; and (3) Review of CPR's Preparedness and Response Strategies and Science Priorities Update.

Day two the agenda will include: (1) State and Local Readiness Public Health Emergency Preparedness (PHEP) Discussion; (2) Strategic Capacity Building and Innovation Program Review Working (SRWG) Update; (3) Polio Containment Workgroup (PCWG) Update; and (4) BSC Discussion of Future Meeting Topics. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–08574 Filed 4–21–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Melinda Wharton, M.D., M.P.H., Designated Federal Officer, Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE, Mailstop H24–8, Atlanta, Georgia 30329–4027, telephone (404) 639–8755, or fax (404) 471–8347.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–08575 Filed 4–21–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Head Start Grant Application; (OMB #0970–0207)

AGENCY: Office of Head Start, Administration for Children and Families, Health and Human Services (HHS).

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the Head Start Grant Application Instrument and Instructions (OMB #0970–0207, expiration 04/30/2022). There are no substantive changes requested to the instruments, but a few minor changes have been made to the reporting structure of applications related to facilities to reflect the information already being submitted by grant recipients.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: To receive Head Start funding, Head Start grant recipients must apply for such funds through this information collection. The information submitted by applicants assists program and grant officials in determining whether the applicant meets the requirements for funding under the Head Start Act including any requirements specified in annual appropriations by Congress.

Respondents: Head Start grant recipients.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Head Start Grant Application	1,600	2.5	25	100,000

Estimated Total Annual Burden Hours: 100,000.

Authority: 42 U.S.C. 9801 *et seq.*

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–08651 Filed 4–21–22; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–0759]

Drug Products, Including Biological Products, That Contain Nanomaterials; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Drug Products, Including Biological Products, That Contain Nanomaterials.'' This guidance finalizes the draft guidance issued December 18, 2017, developed to provide industry with the Agency's current thinking for the development of human drug products, including those that are biological products, in which a nanomaterial is present in the finished dosage form. The guidance also includes recommendations for applicants and sponsors of investigational, premarket, and postmarket submissions for these products.

DATES: The announcement of the guidance is published in the **Federal Register** on April 22, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–0759 for ''Drug Products, Including Biological Products, That Contain Nanomaterials.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked

as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Kavita Vyas, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4154, Silver Spring, MD, 20993–0002, 301–796–4787; or Stephen Ripley, Center for Biologics Evaluation and Research, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD, 20993, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Drug Products, Including Biological Products, That Contain Nanomaterials.'' This guidance applies to human drug products, including those that are biological products, in which a nanomaterial is present in the finished dosage form. This guidance discusses both general principles and specific considerations for developing drug products containing nanomaterials through abbreviated pathways. Considerations for quality, nonclinical, and clinical studies are discussed as they relate to drug products containing nanomaterials throughout product development and production.

This guidance finalizes the draft guidance issued December 18, 2017 (82 FR 60019). There were two noteworthy changes made from the draft version to final guidance in response to stakeholder comments. First, the final guidance provides a glossary of terminology to assist in understanding how important terms are used in the document. Second, several revisions were made to reflect FDA's current thinking with respect to abbreviated applications, including abbreviated new drug applications (ANDAs), for products containing nanomaterials. In addition to changes in response to comments, the final guidance document's discussion regarding over-the-counter (OTC) monograph drugs has been updated for consistency with the enactment of OTC reform provisions of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116–136).

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Drug Products, Including Biological Products, That Contain Nanomaterials.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information, related to investigational new drug applications, in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information, related to new drug applications and ANDAs, including supplemental applications, in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in section 351(k) of the Public Health Service Act (42 U.S.C. 262(k)), regarding biosimilar applications, have been approved under OMB control number 0910–0718. The collections of information, related to biologics license applications, in 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information, related current good manufacturing process requirements, in 21 CFR part 211 have been approved under OMB control number 0910–0139. The collections of information, related to environmental impact requirements, in 21 CFR part 25 have been approved under OMB control number 0910–0322. The collections of information related to controlled correspondence regarding generic drug development have been approved under OMB control number 0910–0797.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: April 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08572 Filed 4–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0490]

Policy Regarding N-acetyl-L-cysteine: Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Policy Regarding N-acetyl-L-cysteine: Draft Guidance for Industry.'' The draft guidance, when finalized, will explain our intent to exercise enforcement discretion with respect to the sale and distribution of certain products that contain N-acetyl-L-cysteine (NAC) and are labeled as dietary supplements. This enforcement discretion policy would apply to products that would be lawfully marketed dietary supplements if NAC were not excluded from the definition of ''dietary supplement'' and that are not otherwise in violation of the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Submit either electronic or written comments on the draft guidance

by May 23, 2022 to ensure that we consider your comment on the draft guidance before we begin work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0490for ''Policy Regarding N-acetyl-L-cysteine: Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Dietary Supplement Programs, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Gerie Voss, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–620–9744; or Lauren Ferguson Baham, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a draft guidance for industry entitled ''Policy Regarding N-acetyl-L-cysteine: Draft Guidance for Industry.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

FDA has determined that, under section 201(ff)(3)(B)(i) of the FD&C Act (21 U.S.C. 321(ff)(3)(B)(i)), NAC is excluded from the dietary supplement definition because NAC was approved as a new drug before it was marketed as a dietary supplement or as a food. FDA received two citizen petitions requesting that we conclude that NAC is not excluded from the definition of dietary supplement under section 201(ff)(3)(B) of the FD&C Act. On March 31, 2022, we denied this request.

In addition, one of the citizen petitions asked FDA ''to recommend and support to the Secretary of HHS'' that he issue a regulation that would determine NAC to be lawful under the FD&C Act. As we stated in our response to the citizen petitions, we have not yet reached a final decision on this request, but we are considering initiating rulemaking under section 201(ff)(3)(B) of the FD&C Act to permit the use of NAC in or as a dietary supplement (*i.e.,* to provide by regulation that NAC is not excluded from the definition of dietary supplement), and, if, among other considerations, FDA does not identify safety-related concerns as we continue our review of the available data and information, we are likely to propose a rule providing that NAC is not excluded from the definition of dietary supplement. While our full safety review of NAC remains ongoing, our initial review has not revealed safety concerns with respect to the use of this ingredient in or as a dietary supplement. In addition, NAC-containing products represented as dietary supplements have been sold in the United States for more than 30 years, and consumers continue to seek access to such products.

Accordingly, the draft guidance, if finalized, would state our intent to exercise enforcement discretion with respect to the sale and distribution of

certain products that contain NAC and are labeled as dietary supplements. The enforcement discretion policy would apply to products that would be lawfully marketed dietary supplements if NAC were not excluded from the definition of ''dietary supplement'' and that are not otherwise in violation of the FD&C Act. Unless we identify safety-related concerns during our ongoing review, FDA would intend to exercise enforcement discretion until either of the following occurs: we complete notice-and-comment rulemaking to allow the use of NAC in or as a dietary supplement (if we move forward with such proceedings), or we deny the citizen petition's request for rulemaking. Should we determine that this enforcement discretion policy is no longer appropriate, we will notify stakeholders by withdrawing or revising this guidance in accordance with 21 CFR 10.115.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/FoodGuidances*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: April 15, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08560 Filed 4–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1137]

Guidance Documents Related to Coronavirus Disease 2019; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of an FDA guidance document related to the Coronavirus Disease 2019 (COVID–19) public health emergency (PHE). This notice of availability (NOA) is pursuant to the process that FDA announced, in the **Federal Register** of March 25, 2020, for making available to the public COVID–19-related guidances. The guidance identified in this notice addresses issues related to the COVID–19 PHE and has been issued in accordance with the process announced in the March 25, 2020, notice. The guidance has been implemented without prior comment, but it remains subject to comment in accordance with the Agency's good guidance practices.

DATES: The announcement of the guidance is published in the **Federal Register** on April 22, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the name of the guidance document that the comments address and the docket number for the guidance (see table 1). Received comments will be placed in the docket(s) and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR/2015/09/18/pdf/2015/-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see § 10.115(g)(5) (21 CFR 10.115(g)(5))).

Submit written requests for single copies of this guidance to the address noted in table 1. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

On January 31, 2020, as a result of confirmed cases of COVID–19, and after consultation with public health officials as necessary, the Secretary of Health and Human Services (HHS), pursuant to the authority under section 319 of the Public Health Service Act (42 U.S.C. 247d), determined that a PHE exists and has existed since January 27, 2020, nationwide.[1] On March 13, 2020, there was a Presidential declaration that the COVID–19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020.[2]

In the **Federal Register** of March 25, 2020 (85 FR 16949) (the March 25, 2020, notice) (available at *https://www.govinfo.gov/content/pkg/FR/2020/03/25/pdf/2020/06222.pdf*), FDA announced procedures for making available FDA guidances related to the COVID–19 PHE. These procedures, which operate within FDA's established good guidance practices regulations, are intended to allow FDA to rapidly disseminate Agency recommendations and policies related to COVID–19 to industry, FDA staff, and other stakeholders. The March 25, 2020, notice stated that due to the need to act quickly and efficiently to respond to the COVID–19 PHE, FDA believes that prior public participation will not be feasible or appropriate before FDA implements COVID–19-related guidances. Therefore, FDA will issue COVID–19-related guidances for immediate implementation without prior public comment (see section 701(h)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)) and § 10.115(g)(2)). The guidances are available on FDA's web pages entitled ''COVID–19-Related Guidance Documents for Industry, FDA Staff, and Other Stakeholders'' (available at *https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders*) and ''Search for FDA Guidance Documents'' (available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents).*

The March 25, 2020, notice further stated that, in general, rather than publishing a separate NOA for each COVID–19-related guidance, FDA intends to publish periodically a consolidated NOA announcing the availability of certain COVID–19-related guidances that FDA issued during the relevant period, as included in table 1. This notice announces COVID–19-related guidances that are posted on FDA's website.

II. Availability of COVID–19-Related Guidance Documents

Pursuant to the process described in the March 25, 2020, notice, FDA is announcing the availability of the following COVID–19-related guidance:

TABLE 1—GUIDANCE RELATED TO THE COVID–19 PUBLIC HEALTH EMERGENCY

Docket No.	Center	Title of guidance	Contact information to request single copies
FDA–2020–D–1137	CBER	Emergency Use Authorization for Vaccines to Prevent COVID–19 (Updated March 31, 2022).	Office of Communication, Outreach and Development, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002, 1–800–835–4709 or 240–402–8010; email *ocod@fda.hhs.gov*.

Although this guidance has been implemented immediately without prior comment, FDA will consider all comments received and revise the guidance as appropriate (see § 10.115(g)(3)).

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

While this CBER guidance contains no collection of information, it does refer to previously approved FDA collections of information (listed in table 2). Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

TABLE 2—CBER GUIDANCES AND COLLECTIONS

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance title referenced in COVID–19 guidance	OMB control No(s).
Emergency Use Authorization for Vaccines to Prevent COVID–19 (Updated March 31, 2022).	21 CFR 314.420 ..... 21 CFR part 312 ..... 21 CFR parts 210, 211, and 610	.... 0910–0001. 0910–0014 ..... 0910–0139.	

[1] Secretary of Health and Human Services, ''Determination that a Public Health Emergency Exists Nationwide as the Result of the 2019 Novel Coronavirus'' (originally issued on January 31, 2020, and subsequently renewed), available at: *https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx.*

[2] ''Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak'' (March 13, 2020), available at: *https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.* On February 24, 2021, there was a Presidential Declaration continuing the national emergency concerning the COVID–19 pandemic beyond March 1, 2021. See ''Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic'' (February 24, 2021), available at *https://www.federalregister.gov/documents/2021/02/26/2021-04173/continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic.*

TABLE 2—CBER GUIDANCES AND COLLECTIONS—Continued

COVID–19 guidance title	CFR cite referenced in COVID–19 guidance	Another guidance title referenced in COVID–19 guidance	OMB control No(s).
	21 CFR part 600	.....	0910–0308
	21 CFR part 601	0910–0338.	
		Emergency Use Authorization of Medical Products and Related Authorities.	0910–0595

IV. Electronic Access

Persons with access to the internet may obtain COVID–19-related guidances at:

- FDA web page entitled ''COVID–19-Related Guidance Documents for Industry, FDA Staff, and Other Stakeholders,'' available at *https://www.fda.gov/emergency-preparedness-and-response/mcm-issues/covid-19-related-guidance-documents-industry-fda-staff-and-other-stakeholders;*
- FDA web page entitled ''Search for FDA Guidance Documents'' available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents;* or *https://www.regulations.gov.*

Dated: April 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08564 Filed 4–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–0957]

Compliance Policy Guides Sec. 335.500; Sec. 310.200; Sec. 393.100; Sec. 398.425; Sec. 394.500; Sec. 300.750; Withdrawal of Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the withdrawal of six compliance policy guides (CPG). The Agency is taking this action because the CPGs identified in this notice contain information that is either duplicative of other information the Agency has published or no longer reflects the Agency's current thinking.

DATES: The withdrawal is effective April 22, 2022.

FOR FURTHER INFORMATION CONTACT: Erica Takai, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993–0002, 301–796–6353.

SUPPLEMENTARY INFORMATION:

After careful review of CPGs related to device products, FDA has identified the following six CPGs, that contain information that is either duplicative or no longer reflects the Agency's current thinking.

FDA originally issued CPG Sec. 335.500, ''Razor Blades, Manicuring Instruments—Not Considered Devices Under 201(h)'' (CPG Sec. 335.500) in April 1976. The CPG was revised periodically but has not been revised since March 1995. Given the time that has passed since the last revision of CPG Sec. 335.500, upon further review, FDA has determined that while the CPG still reflects the Agency's current thinking, it is no longer needed because it appears to be seldomly accessed.

CPG Sec. 310.200, ''Sphygmomanometers—Rx Legend'' (CPG Sec. 310.200) was originally issued in January 1973. The CPG was revised periodically but has not been revised since September 1987. Since CPG Sec. 310.200 was last updated, many of these products have been cleared to be sold over the counter and therefore, the policy contained in this CPG is obsolete and no longer needed.

CPG Sec. 393.100, ''Enforcement Policy for Certain Laser Light Shows, Displays, and/or Devices. (21 CFR 1040.10 and 1040.11)'' (CPG Sec 393.100) was originally issued in October 1980. The CPG was revised periodically but has not been revised since March 2005. Since CPG Sec. 393.100 was last revised, the policies regarding these products have been updated and additional resources have been made available to the public regarding these products, including in four laser notice guidance documents.[1] The change in policies and the availability of additional resources has resulted in the information contained within CPG Sec. 393.100 to be duplicative and outdated.

CPG Sec. 398.425, ''Override of Positive Beam Limitation—21 CFR 1020.31(g)(5)'' (CPG Sec. 398.425) was originally issued in October 1980. The CPG was revised periodically but has not been revised since March 2005. Given the time that has passed since the last revision of CPG Sec. 398.425, upon further review, FDA has determined that the CPG provides duplicative information to what is provided in 21 CFR 1020.31(g)(5).

CPG Sec. 394.500, ''Importation of Television Products, Microwave Ovens, and Inherent Class I Laser Products for Investigation and Evaluation during Design Development'' (CPG Sec. 394.500) was originally issued in March 1984. The CPG was revised periodically but has not been revised since July 2004. Given the time that has passed since the last revision of CPG Sec. 394.500, upon further review, FDA has determined that the CPG contains outdated information and references.

Finally, CPG Sec. 300.750, ''Class III Devices Subject to 515(b) Requirements'' (CPG Sec. 300.750) was originally issued in October 1990. The CPG was revised periodically but has not been revised since July 2005. Since CPG Sec. 300.750 was last revised, FDA has completed the actions for the preamendment class III devices discussed in the CPG to either reclassify them into class I, or II, or, if retaining the device in class III, calling for PMAs;[2] as such, the CPG is obsolete.

Therefore, after careful review, FDA is withdrawing CPG Sec. 335.500, CPG Sec. 310.200, 393.100, CPG Sec. 398.425, CPG Sec. 394.500, and CPG Sec. 300.750 in their entirety because the CPGs are either obsolete or contain duplicative information.

Dated: April 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08587 Filed 4–21–22; 8:45 am]

BILLING CODE 4164–01–P

[1] See *https://www.fda.gov/radiation-emitting-products/home-business-and-entertainment-products/laser-light-shows.*

[2] See *https://www.fda.gov/about-fda/cdrh-transparency/515-program-initiative* and *https://www.fda.gov/about-fda/cdrh-transparency/515-project-status.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 057

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA Recognized Consensus Standards). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 057'' (Recognition List Number: 057), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit either electronic or written comments on the notice at any time. These modifications to the list of recognized standards are applicable April 22, 2022.

ADDRESSES: You may submit comments on the current list of FDA Recognized Consensus Standards at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2004–N–0451 for ''Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 057.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 057.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION''. The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

An electronic copy of Recognition List Number: 057 is available on the internet at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm.* See section IV for electronic access to the searchable database for the current list of FDA-recognized consensus standards, including Recognition List Number: 057 modifications and other standards-related information. Submit written requests for a single hard copy of the document entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 057'' to Scott Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5606, Silver Spring, MD 20993, 301–796–6287. Send one self-addressed adhesive label to assist that office in processing your request, or Fax your request to 301–847–8144.

FOR FURTHER INFORMATION CONTACT: Scott Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5606, Silver Spring, MD 20993, 301–796–6287, *CDRHStandardsStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In the **Federal Register** of September 14, 2018 (83 FR 46738), FDA announced the availability of a guidance entitled ''Appropriate Use of Voluntary Consensus Standards in Premarket Submissions for Medical Devices.'' The guidance describes how FDA has implemented its standards recognition

program and is available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/appropriate-use-voluntary-consensus-standards-premarket-submissions-medical-devices.* Modifications to the initial list of recognized standards, as published in the **Federal Register**, can be accessed at *https://www.fda.gov/medical-devices/standards-and-conformity-assessment-program/federal-register-documents.*

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains on its website hypertext markup language (HTML) and portable document format (PDF) versions of the list of FDA Recognized Consensus Standards, available at *https://www.fda.gov/medical-devices/standards-and-conformity-assessment-program/federal-register-documents.* Additional information on the Agency's Standards and Conformity Assessment Program is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/standards-and-conformity-assessment-program.*

II. Modifications to the List of Recognized Standards, Recognition List Number: 057

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency is recognizing for use in premarket submissions and other requirements for devices. FDA is incorporating these modifications to the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA is using the term ''Recognition List Number: 057'' to identify the current modifications.

In table 1, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, if applicable; (2) the correction of errors made by FDA in listing previously recognized standards; and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III, FDA lists modifications the Agency is making that involve new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 057.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
A. Anesthesiology			
No new entries at this time.			
B. Biocompatibility			
2–275	.....	ISO 10993–7 Second edition 2008–10–15 Biological evaluation of medical devices—Part 7: Ethylene oxide sterilization residuals [Including: Technical Corrigendum 1 (2009), AMENDMENT 1: Applicability of allowable limits for neonates and infants (2019)].	Title change.
2–284	2–292	USP–NF M98833_01_01 <87> Biological Reactivity Test, In Vitro—Direct Contact Test.	Withdrawn and replaced with newer version.
2–285	2–293	USP–NF M98833_01_01 <87> Biological Reactivity Test, In Vitro—Elution Test.	Withdrawn and replaced with newer version.
2–286	2–294	USP–NF M98834_01_01 <88> Biological Reactivity Tests, In Vivo	Withdrawn and replaced with newer version.
2–287	2–295	USP–NF M98900_01_01 <151> Pyrogen Test (USP Rabbit Test).	Withdrawn and replaced with newer version.
C. Cardiovascular			
3–88	3–171	ASTM F2514–21 Standard Guide for Finite Element Analysis (FEA) of Metallic Vascular Stents Subjected to Uniform Radial Loading.	Withdrawn and replaced with newer version.
3–99	3–172	AAMI TIR42:2021 Evaluation of particulate associated with vascular medical devices.	Withdrawn and replaced with newer version.
3–133	3–173	ISO 5840–3 Second edition 2021–01 Cardiovascular implants—Cardiac valve prostheses—Part 3: Heart valve substitutes implanted by transcatheter techniques.	Withdrawn and replaced with newer version.
3–145	3–174	ISO 5840–1 Second edition 2021–01 Cardiovascular implants—Cardiac valve prostheses—Part 1: General requirements.	Withdrawn and replaced with newer version.
3–147	3–175	ISO 5840–2 Second edition 2021–01 Cardiovascular implants—Cardiac valve prostheses—Part 2: Surgically implanted heart valve substitutes.	Withdrawn and replaced with newer version.
D. Dental/Ear, Nose, and Throat (ENT)			
4–89	.....	ANSI/ADA Standard No. 53—2008 (R2013) Polymer-Based Crown and Bridge Materials.	Withdrawn.
4–282	4–284	ISO 10873 Second edition 2021–07 Dentistry—Denture adhesives	Withdrawn and replaced with newer version.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
E. General I (Quality Systems/Risk Management) (QS/RM)			
5–117	5–134	ISO 15223–1 Fourth edition 2021–07 Medical devices—Symbols to be used with medical device labels, labelling, and information to be supplied—Part 1: General requirements.	Withdrawn and replaced with newer version.
F. General II (Electrical Safety/Electromagnetic Compatibility) (ES/EMC)			
19–34	19–41	ANSI/UL 61010–1 3rd Ed, dated May 12, 2012 with revision through July 19, 2019 Standard for Safety for Electrical Equipment For Measurement, Control and Laboratory Use; Part 1: General Requirements.	Withdrawn and replaced with newer version.
G. General Hospital/General Plastic Surgery (GH/GPS)			
6–365	6–464	ISO 11040–4 Third edition 2015–04–01 Prefilled syringes—Part 4: Glass barrels for injectables and sterilized subassembled syringes ready for filling [Including AMENDMENT 1 (2020)].	Withdrawn and replaced with newer version.
6–451	6–465	USP–NF M76090_03_01 Sodium Chloride Irrigation	Withdrawn and replaced with newer version.
6–452	6–466	USP–NF M76070_03_01 Sodium Chloride Injection	Withdrawn and replaced with newer version.
6–453	6–467	USP–NF M80200_04_01 Nonabsorbable Surgical Suture	Withdrawn and replaced with newer version.
6–454	6–468	USP–NF M99670_02_01 <881> Tensile Strength	Withdrawn and replaced with newer version.
6–455	6–469	USP–NF M99650_02_01 <861> Sutures—Diameter	Withdrawn and replaced with newer version.
6–456	6–470	USP–NF M99660_03_01 <871> Sutures—Needle Attachment	Withdrawn and replaced with newer version.
6–457	6–471	USP–NF M88880_05_01 Sterile Water for Irrigation	Withdrawn and replaced with newer version.
6–458	6–472	USP–NF M36660_04_01 Heparin Lock Flush Solution.	Withdrawn and replaced with newer version.
6–459	6–473	USP–NF M80190_04_01 Absorbable Surgical Suture	Withdrawn and replaced with newer version.
H. In Vitro Diagnostics (IVD)			
No new entries at this time.			
I. Materials			
8–103	8–563	ASTM F1801–20 Standard Practice for Corrosion Fatigue Testing of Metallic Implant Materials.	Withdrawn and replaced with newer version.
8–121	8–564	ASTM F2005–21 Standard Terminology for Nickel-Titanium Shape Memory Alloys.	Withdrawn and replaced with newer version.
8–193	8–565	ASTM F2754/F2754M–21 Standard Test Method for Measurement of Camber Cast Helix and Direction of Helix of Coiled Wire.	Withdrawn and replaced with newer version.
8–346	8–566	ASTM F1813–21 Standard Specification for Wrought Titanium—12 Molybdenum—6 Zirconium—2 Iron Alloy for Surgical Implant (UNS R58120).	Withdrawn and replaced with newer version.
8–353	8–567	ASTM F86–21 Standard Practice for Surface Preparation and Marking of Metallic Surgical Implants.	Withdrawn and replaced with newer version.
8–355	8–568	ASTM F1586–21 Standard Specification for Wrought Nitrogen Strengthened 21 Chromium-10 Nickel-3 Manganese-2.5 Molybdenum Stainless Steel Bar for Surgical Implants (UNS S31675).	Withdrawn and replaced with newer version.
8–385	8–569	ASTM F648–21 Standard Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants.	Withdrawn and replaced with newer version.
8–398	8–570	ASTM F1108–21 Standard Specification for Titanium-6Aluminum-4Vanadium Alloy Castings for Surgical Implants.	Withdrawn and replaced with newer version.
8–422	8–571	ASTM F2052–21 Standard Test Method for Measurement of Magnetically Induced Displacement Force on Medical Devices in the Magnetic Resonance Environment.	Withdrawn and replaced with newer version.
8–423	8–572	ASTM F2565–21 Standard Guide for Extensively Irradiation-Crosslinked Ultra-High Molecular Weight Polyethylene Fabricated Forms for Surgical Implant Applications.	Withdrawn and replaced with newer version.
8–424	8–573	ASTM F2695–12(2020) Standard Specification for Ultra-High Molecular Weight Polyethylene Powder Blended With Alpha-Tocopherol (Vitamin E) and Fabricated Forms for Surgical Implant Applications.	Withdrawn and replaced with newer version.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
8–425	8–574	ASTM F2820–12(2021)e1 Standard Specification for Polyetherketoneketone (PEKK) Polymers for Surgical Implant Applications.	Withdrawn and replaced with newer version.
8–443	8–575	ASTM F3160–21 Standard Guide for Metallurgical Characterization of Absorbable Metallic Materials for Medical Implants.	Withdrawn and replaced with newer version.
8–450	8–576	ASTM F451–21 Standard Specification for Acrylic Bone Cement	Withdrawn and replaced with newer version.
8–456	8–577	ISO 13179–1 Second Edition 2021–09 Implants for surgery—Coatings on metallic surgical implants—Part 1: Plasma-sprayed coatings derived from titanium or titanium-6 aluminum-4 vanadium alloy powders.	Withdrawn and replaced with newer version. Title change.
8–460	8–578	ASTM F2848–21 Standard Specification for Medical-Grade Ultra-High-Molecular-Weight Polyethylene Yarns.	Withdrawn and replaced with newer version.
8–515	8–579	ISO 13779–3 Second Edition 2018–12 Implants for surgery—Hydroxyapatite—Part 3: Chemical analysis and characterization of crystallinity ratio and phase purity [Including AMENDMENT 1 (2021)].	Withdrawn and replaced with newer version.
J. Nanotechnology			
No new entries at this time.			
K. Neurology			
No new entries at this time.			
L. Obstetrics-Gynecology/Gastroenterology/Urology (OB-Gyn/G/Urology)			
No new entries at this time.			
M. Ophthalmic			
10–73	10–127	ANSI Z80.21–2020 American National Standard for Ophthalmics—Instruments—General-Purpose Clinical Visual Acuity Charts.	Withdrawn and replaced with newer version.
10–87	10–128	ASTM D882–18 Standard Test Method for Tensile Properties of Thin Plastic Sheeting.	Withdrawn and replaced with newer version.
10–88	10–129	ASTM D790–17 Standard Test Methods for Flexural Properties of Unreinforced and Reinforced Plastics and Electrical Insulating Materials.	Withdrawn and replaced with newer version.
10–102	10–130	ANSI Z80.36–2021 American National Standard for Ophthalmics—Light Hazard Protection for Ophthalmic Instruments.	Withdrawn and replaced with newer version.
N. Orthopedic			
11–239	11–385	ASTM F2345–21 Standard Test Methods for Determination of Cyclic Fatigue Strength of Ceramic Modular Femoral Heads.	Withdrawn and replaced with newer version.
11–266	11–386	ASTM F2665–21 Standard Specification for Total Ankle Replacement Prosthesis.	Withdrawn and replaced with newer version.
11–305	11–387	ASTM F1781–21 Standard Specification for Elastomeric Flexible Hinge Finger Total Joint Implants.	Withdrawn and replaced with newer version.
11–345	11–388	ASTM F1717–21 Standard Test Methods for Spinal Implant Constructs in a Vertebrectomy Model.	Withdrawn and replaced with newer version.
11–359	11–389	ISO 7206–10 Second edition 2018–08 Implants for surgery—Partial and total hip-joint prostheses—Part 10: Determination of resistance to static load of modular femoral heads [Including AMENDMENT 1 (2021)].	Withdrawn and replaced with newer version.
O. Physical Medicine			
No new entries at this time.			
P. Radiology			
12–299	12–341	IEC 62563–1 Edition 1.2 2021–07 CONSOLIDATED VERSION Medical electrical equipment—Medical image display systems—Part 1: Evaluation methods.	Withdrawn and replaced with newer version.
12–300	12–342	NEMA DICOM PS 3.1—3.20 2021e Digital Imaging and Communications in Medicine (DICOM) Set.	Withdrawn and replaced with newer version.

TABLE 1—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
Q. Software/Informatics			
13–46	.....	ASTM F2761–09 (2013) Medical Devices and Medical Systems—Essential safety requirements for equipment comprising the patient-centric integrated clinical environment (ICE)—Part 1: General requirements and conceptual model.	Withdrawn. See 13–120.
R. Sterility			
14–424	14–563	ISO 13408–6 Second edition 2021–04 Aseptic processing of health care products—Part 6: Isolator systems.	Withdrawn and replaced with newer version.
14–555	14–564	USP–NF M98910_01_01 <161> Medical Devices-Bacterial Endotoxin and Pyrogen Tests.	Withdrawn and replaced with newer version.
14–556	14–565	USP–NF M98802_01_01 <62> Microbiological Examination of Nonsterile Products: Tests for Specified Microorganisms.	Withdrawn and replaced with newer version.
14–557	14–566	USP–NF M98795_02_01 <55> Biological Indicators—Resistance Performance Tests.	Withdrawn and replaced with newer version.
14–558	14–567	USP–NF M7414_01_01 <1229.5> Biological Indicators for Sterilization	Withdrawn and replaced with newer version.
14–559	14–568	USP–NF M98800_01_01 <61> Microbiological Examination of Nonsterile Products: Microbial Enumeration Tests.	Withdrawn and replaced with newer version.
14–560	14–569	USP–NF M98810_01_01 <71> Sterility Tests	Withdrawn and replaced with newer version.
14–561	14–570	USP–NF M98830_02_01 <85> Bacterial Endotoxins Test	Withdrawn and replaced with newer version.
S. Tissue Engineering			
15–29	.....	ASTM F2259–10 (Reapproved 2012)e1 Standard Test Method for Determining the Chemical Composition and Sequence in Alginate by Proton Nuclear Magnetic Resonance (1H NMR) Spectroscopy.	Withdrawn.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

III. Listing of New Entries

In table 2, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 057. These entries are of standards not previously recognized by FDA.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference No. and date
A. Anesthesiology		
No new entries at this time.		
B. Biocompatibility		
No new entries at this time.		
C. Cardiovascular		
3–176	Cardiovascular implants and artificial organs—Cannulae for extracorporeal circulation	ISO 18193 First edition 2021–08.
3–177	Standard Guide for Three-Point Bending of Balloon-Expandable Vascular Stents and Stent Systems.	ASTM F2606–08 (Reapproved 2021).
3–178	Standard Guide for Radial Loading of Balloon-Expandable and Self-Expanding Vascular Stents.	ASTM F3067–14 (Reapproved 2021).
3–179	Standard Guide for Design Verification Device Size and Sample Size Selection for Endovascular Devices.	ASTM F3172–15 (Reapproved 2021).
3–180	Standard Test Method for Stent and Endovascular Prosthesis Kink Resistance	ASTM F3505–21.
D. Dental/Ear, Nose, and Throat (ENT)		
4–285	Dental Abrasive Powders	ANSI/ADA Standard No. 37—1986 (R2020).
4–286	Dental Impression Trays	ANSI/ADA Standard No. 87—1995 (R2014).

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
4–287	Oral Rinses (Modified adoption of ISO 16408:2015, Dentistry Oral Care Products—Oral Rinses).	ANSI/ADA Standard No. 116—2020.
4–288	Dentistry—Mixing machines for dental amalgam	ISO 7488 Second edition 2018–04.
4–289	Dentistry—Intraoral spatulas	ISO 18556 First edition 2016–04.
4–290	Dentistry—Integrated dental floss and handles	ISO 28158 Second edition 2018–09.
4–291	Dentistry—Products for external tooth bleaching	ISO 28399 First edition 2011–01.
4–292	Dentistry—Screening method for erosion potential of oral rinses on dental hard tissues.	ISO 28888 First edition 2013–10.
	E. General I (Quality Systems/Risk Management) (QS/RM)	
	No new entries at this time.	
	F. General II (Electrical Safety/Electromagnetic Compatibility) (ES/EMC)	
19–42	Electrical equipment for measurement, control and laboratory use—EMC requirements—Part 1: General requirements.	IEC 61326–1 Edition 3.0 2020–10.
19–43	Electrical equipment for measurement, control and laboratory use—EMC requirements—Part 2–6: Particular requirements—In vitro diagnostic (IVD) medical equipment.	IEC 61326–2–6 Edition 3.0 2020–10.
19–44	American National Standard—Recommended Practice for In Situ RF Immunity Evaluation of Electronic Devices and Systems.	ANSI/IEEE C63.24–2021.
	G. General Hospital/General Plastic Surgery (GH/GPS)	
6–474	Standard Specification for Isolation Gowns Intended for Use in Healthcare Facilities	ASTM F3352–19.
	H. In Vitro Diagnostics (IVD)	
7–309	Radiological protection—Performance criteria for laboratories using the cytokinesis block micronucleus (CBMN) assay in peripheral blood lymphocytes for biological dosimetry.	ISO 17099 First edition 2014–11–15.
7–310	Radiological protection—Performance criteria for service laboratories performing biological dosimetry by cytogenetics.	ISO 19238 Second edition 2014–02–01.
7–311	A Hierarchical Approach to Selecting Surrogate Samples for the Evaluation of In Vitro Medical Laboratory Tests.	CLSI EP39, 1st Edition
	I. Materials	
8–580	Eyewear display—Part 20–10: Fundamental measurement methods—Optical properties.	IEC 63145–20–10 Edition 1.0 2019–08.
8–581	Eyewear display—Part 20–20: Fundamental measurement methods—Image quality	IEC 63145–20–20 Edition 1.0 2019–09.
8–582	Eyewear display—Part 22–10: Specific measurement methods for AR type—Optical properties.	IEC 63145–22–10 Edition 1.0 2020–01.
	J. Nanotechnology	
18–19	Nanotechnologies—Measurements of particle size and shape distributions by scanning electron microscopy.	ISO 19749 First edition 2021–07.
18–20	Standard Guide for Visualization and Identification of Nanomaterials in Biological and Nonbiological Matrices Using Darkfield Microscopy/Hyperspectral Imaging (DFM/HSI) Analysis.	ASTM E3275–21.
	K. Neurology	
	No new entries at this time.	
	L. Obstetrics-Gynecology/Gastroenterology/Urology (OB-Gyn/G/Urology)	
	No new entries at this time.	
	M. Ophthalmic	
	No new entries at this time.	
	N. Orthopedic	
11–390	Implants for surgery—Pre-clinical mechanical assessment of spinal implants and particular requirements—Part 2: Spinal intervertebral body fusion devices.	ISO 23089–2 First edition 2021–05.
11–391	Standard Practice for Evaluating Mobile Bearing Knee Tibial Baseplate Rotational Stops.	ASTM F2722–21.
11–392	Standard Test Method for Evaluating Mobile Bearing Knee Tibial Baseplate/Bearing Resistance to Dynamic Disassociation.	ASTM F2723–21.

TABLE 2—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
11–393	Standard Test Method for Evaluating Mobile Bearing Knee Dislocation	ASTM F2724–21.
	O. Physical Medicine	
16–232	Medical electrical equipment—Part 2–78: Particular requirements for basic safety and essential performance of medical robots for rehabilitation, assessment, compensation or alleviation.	IEC 80601–2–78 Edition 1.0 2019–07.
	P. Radiology	
	No new entries at this time.	
	Q. Software/Informatics	
13–120	Medical Devices and Medical Systems—Essential safety requirements for equipment comprising the patient-centric integrated clinical environment (ICE)—Part 1: General requirements and conceptual model.	ANSI/AAMI 2700–1:2019.
	R. Sterility	
14–571	Sterilization of health care products—Biological indicators—Part 8: Method for validation of a reduced incubation time for a biological indicator.	ISO 11138–8 First edition 2021–07.
	S. Tissue Engineering	
	No new entries at this time.	

[1] All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the current list of FDA Recognized Consensus Standards in a searchable database that may be accessed at *https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.* Such standards are those that FDA has recognized by notice published in the **Federal Register** or that FDA has decided to recognize but for which recognition is pending (because a periodic notice has not yet appeared in the **Federal Register**). FDA will announce additional modifications and revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to *CDRHStandardsStaff@fda.hhs.gov.* To be considered, such recommendations should contain, at a minimum, the information available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/standards-and-conformity-assessment-program#process.*

Dated: April 18, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08571 Filed 4–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[OMB No. 0917–0040]

Request for Public Comment: 30-Day Information Collection: Request for Reinstatement of Indian Health Service Purchased/Referred Care Proof of Residency

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments; request for reinstatement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to take this opportunity to comment on the reinstatement of the information collection, Office of Management and Budget (OMB) Control Number 0917–0040, titled, Purchased/Referred Care Proof of Residency. The IHS is requesting OMB to approve a reinstatement of this collection. Notice regarding the information collection was last published in the **Federal Register** on January 24, 2022, and allowed 60 days for public comment. The purpose of this notice is to announce the IHS's intent to reinstate this collection to OMB and to allow 30 days for public comment to be submitted directly to OMB. A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID: IHS_FRDOC_0001).

DATES: Consideration will be given to all comments received by May 23, 2022.

ADDRESSES: *Direct Your Comments to OMB:* Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Evonne Bennett, Information Collection Clearance Officer at: *Evonne.Bennett@ihs.gov* or 301–443–4750.

SUPPLEMENTARY INFORMATION: This previously approved information collection project was last published in the **Federal Register** on January 24, 2022, and allowed 60 days for public comment (87 FR 3562). No public comment was received in response to the notice. This notice announces our intent to reinstate this collection, which expired March 31, 2022; to submit this

collection to OMB for approval of reinstatement; and to solicit comments on specific aspects for the proposed information collection.

Title: Purchased/Referred Care Proof of Residency.

OMB Control Number: 0917–0040.

Need and Use of Information Collection: The IHS Purchased/Referred Care Program needs the information requested on the PRC Proof of Residency form to verify that individuals seeking medical services through a PRC program meet the residency requirements specific to PRC under 42 CFR 136.23.

Agency Form Number: IHS 976.

Members of Affected Public: Individuals/Households.

Status of the Proposed Information Collection: Renewal request.

Type of Respondents: Individuals.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden hour per response, and Total annual burden hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response *	Total annual burden hours
Individual Patient Count	77,185	1	77,185	3/60	3,859.25
Total	77,185	1	77,185	3/60	3,859.25

* For ease of understanding, the average burden per response is 3 minutes.

There are no direct costs to respondents to report.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) Whether the information collection activity is necessary to carry out an agency function;

(b) whether the agency processes the information collected in a useful and timely fashion;

(c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) whether the methodology and assumptions used to determine the estimates are logical;

(e) ways to enhance the quality, utility, and clarity of the information being collected; and

(f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

[FR Doc. 2022–08619 Filed 4–21–22; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. The URL link to this meeting is *https://videocast.nih.gov/*. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Council for Nursing Research.

Date: May 24, 2022.

Open: 11:00 a.m. to 3:00 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, One Democracy Plaza, Bethesda, MD 20892, *https://videocast.nih.gov/watch=45025* (Virtual Meeting).

Closed: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate review of applications.

Place: National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, One Democracy Plaza, Bethesda, MD 20892, *https://videocast.nih.gov/watch=45025* (Virtual Meeting).

Contact Person: Dr. Elizabeth Tarlov, Ph.D., R.N., Director, Division of Extramural Science Programs, National Institute of Nursing Research/NIH, 6701 Democracy Blvd., Bethesda, MD 20892, (301) 594–1580, *Elizabeth.tarlov@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.ninr.nih.gov/aboutninr/nacnr,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: April 18, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08554 Filed 4–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Institute Special Emphasis Panel; Brain Initiative-Related Research Education: Short Courses (R25).

Date: May 16, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian Hoshaw, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 18, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08555 Filed 4–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Division of Intramural Research Board of Scientific Counselors, NIAID.

Date: June 13–15, 2022.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Rocky Mountain Laboratories, 903 South 4th Street, Hamilton, MT 59840.

Contact Person: Steven M. Holland, MD, Ph.D., Chief, Laboratory of Clinical Infectious Diseases, National Institutes of Health/NIAID, Hatfield Clinical Research Center, Bethesda, MD 20892–1684, 301–402–7684, *sholland@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08612 Filed 4–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Center for Cancer Training (CCT) Application Form for Electronic Individual Development Plan (eIDP) (National Cancer Institute)

AGENCY: National Institutes of Health, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

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: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Erika Ginsburg, Scientific Program Analyst, Center for Cancer Training, National Cancer Institute, 9609 Medical Center Drive, Room 2W–110, Bethesda, Maryland 20892 or call non-toll-free number (240) 276–5627 or email your request, including your address to: *ginsbure@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on February 16, 2022 (87 FR 8858) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health (NIH), may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, NIH has submitted to OMB a request for review and approval of the information collection listed below.

Proposed Collection: Center for Cancer Training (CCT) Application Form for electronic Individual Development Plan (eIDP), 0925–0762, Expiration Date 07/31/2022, REVISION, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The National Cancer Institute's (NCI) Center for Cancer Training (CCT) supports NCI's goal of training cancer researchers with various educational levels (postbaccalaureate, graduate students, postdoctoral fellows) and for varying periods of time (3 months to 5 years). The eIDP is an online, detailed questionnaire focused on responses to career and professional goals and expectations while the trainee works at the NIH. The eIDP ensures the trainees are receiving proper career and professional guidance, making appropriate progress, and determining activities to achieve their goals. The eIDP is also used to track trainees' career and professional goals and to ensure trainees receive the tools needed to achieve those goals. The eIDP will be administered electronically to new trainees as they on-board or to current trainees on a rolling basis upon their yearly appointment renewal dates. Electronic email will be used to request completion of the eIDP. The effectiveness of training could also be enhanced by the reports received by the trainees completing the eIDP. Individual Development Plans have been collected

by paper and pencil from trainees since 2001. Since approval of this Information Collection Request and since its inception, other ICs have come to know about the eIDP and want to join and have their trainees participate. This revision request is intended to add other ICs to the eIDP system.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden are 2,009 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
Individuals—eIDP	1,800	1	1	1,800
Individuals—Alumni	500	1	5/60	42
Individuals—Feedback	500	1	20/60	167
Totals	.....	2,800	.....	2,009

Diane Kreinbrink,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2022–08597 Filed 4–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0205; OMB Control Number: 1625–0046]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0046, Certificates of Financial Responsibility under the Oil Pollution Act of 1990; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before June 21, 2022.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2022–0205] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.,* chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2022–0205], and must be received by June 21, 2022.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Certificates of Financial Responsibility under the Oil Pollution Act of 1990.

OMB Control Number: 1625–0046.

Summary: The information collection requirements described in this supporting statement are necessary to

provide evidence of a respondent's ability to pay for removal costs and damages associated with discharges or substantial threats of discharges of hazardous material or oil into the navigable waters, adjoining shorelines or the exclusive economic zone of the United States. The requirements are imposed generally on operators and financial guarantors of tank vessels over 100 gross tons and all vessel over 300 gross tons.

Need: If the requested information is not collected, the Coast Guard will be unable to comply with the provisions of the Oil Pollution Act (OPA) of 1990 and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to ensure that responsible parties have the ability to pay for cleanup costs and damages when there is an oil or hazardous material spill or threat of a spill.

Forms:

- CG–5585, Application for Vessel Certificate of Financial Responsibility (Water Pollution);
- CG–5586–1, Master Insurance Guaranty;
- CG–5586–2, Surety Bond Guaranty;
- CG–5586–3, Financial Guaranty; and
- CG–5586–4, Master Financial Guaranty.

Respondents: Vessel operators and approved insurers.

Frequency: Annually, to include collection of information on a three year cycle.

Hour Burden Estimate: The estimated burden remains 3,400 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: April 19, 2022.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2022–08665 Filed 4–21–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2022–0017]

Request for Information on U.S. Customs and Border Protection Processes, Programs, Regulations, Collections of Information and Policies Pursuant to 19 CFR Part I

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Request for information.

SUMMARY: U.S. Customs and Border Protection (CBP) is issuing this Request for Information (RFI) to receive input from the public on specific CBP processes, programs, regulations, collections of information, and policies for the agency to consider modifying, streamlining, expanding, or repealing in light of recent executive orders. This RFI is intended to ensure that CBP processes, programs, regulations, collections of information, and policies issued under CBP's regulations, authority contain necessary, properly tailored, and up-to-date requirements that effectively achieve CBP's mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; protecting public health and the environment; restoring science; and bolstering resilience from the effects of climate change, particularly for those disproportionately affected by climate change, and promoting and protecting our public health and the environment by advancing and prioritizing environmental justice.

DATES: Written comments are requested on or before June 21, 2022. Comments received after this date will be considered for future advisory, communicative, and outreach efforts to the extent practicable.

ADDRESSES: Please submit any comments, identified by Docket No. USCBP–2022–0017, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments via Docket No. USCBP–2022–0017.
- *Mail:* Trade and Commercial Regulations Branch, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this Request for Information. All comments received by mail will be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.* Due to the relevant COVID–19-related restrictions, CBP has temporarily suspended on-site public inspections of the public comments.

FOR FURTHER INFORMATION CONTACT: Marty Chavers, Deputy Executive Director, Office of Policy, U.S. Customs and Border Protection, (202) 325–1395, or *CBP-PUBLIC-RFI-QUESTIONS@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to comment on this notice by submitting written data, views, or arguments using a method identified in the **ADDRESSES** section.

Instructions: All submissions must include the agency name and docket number for this notice. Comments that will provide the most assistance to U.S. Custom and Border Protection (CBP) will reference the specific portion of the Request for Information (RFI) that is being addressed, explain the reason(s) for any recommended changes to CBP processes, programs, regulations, collections of information, and policies, and include data, information, or authorities that support any recommended changes.

All comments received will be posted without change to *https://www.regulations.gov.* Commenters are encouraged to identify, by number, the specific question or questions to which they are responding.

Docket: For access to the docket to read comments, go to *https://www.regulations.gov.*

II. Background

On January 20, 2021, the President issued Executive Order 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government'' (E.O. 13985),[1] designed to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. E.O. 13985 defines ''equity'' as ''the consistent and systemic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as: Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.'' E.O. 13985 further defines

[1] 86 FR 7009 (Jan. 25, 2021).

''underserved communities'' as ''populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the . . . definition of 'equity.' ''

E.O. 13985 requires each agency to assess whether, and to what extent, its programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups with the goal of developing policies and programs that deliver resources and benefits equitably to all. This executive order requires agencies to consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs.

Also on January 20, 2021, the President issued Executive Order 13990 ''Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis'' (E.O. 13990).[2] This executive order requires agencies to review and take action to address the promulgation of Federal regulations and other actions in conflict with the objectives of improving public health and protecting the environment by, among other things, bolstering resilience to the effects of climate change. In taking these actions, agencies were directed to seek input from the public and stakeholders, including State, local, Tribal, and territorial officials, scientists, labor unions, environmental advocates, and environmental justice groups.

Subsequently, on January 27, 2021, the President issued Executive Order 14008 ''Tackling the Climate Crisis at Home and Abroad'' (E.O. 14008).[3] This executive order directs agencies to move quickly to build resilience, at home and abroad, against effects of climate change and to prioritize action on climate change in policymaking. This executive order specifically directs the Secretary of Homeland Security to consider the implications of climate change to the Arctic, along our Nation's borders, and to National Critical Functions, including any relevant information from the Climate Risk Analysis, in developing strategy, planning and programming. Additionally, the executive order directs agencies that engage in extensive international work to develop strategies and plans for integrating climate considerations into their international work, as appropriate and consistent with applicable law. To facilitate these actions, agencies are required to engage with State, local, Tribal, and territorial governments; workers and communities; and leaders across all sectors of our economy.

These executive orders are consistent with the mandates found in other executive orders such as Executive Order 13563 (January 18, 2011), ''Improving Regulation and Regulatory Review,'' which directs agencies to ''identify the best, most innovative, and least burdensome tools for achieving regulatory ends.'' [4] Executive Order 13563 is affirmed in the President's Memorandum of January 20, 2021, Modernizing Regulatory Review.[5] Further, Executive Order 13707 (September 15, 2015), ''Using Behavioral Insights to Better Serve the American People,'' directs agencies to design ''programs and policies to reflect our best understanding of how people engage with, participate in, use, and respond to those policies and programs.'' [6] Executive Order 13707 is affirmed in the President's Memorandum of January 27, 2021, Restoring Trust in Government through Scientific Integrity and Evidence-Based Policymaking.[7]

Pursuant to these executive orders and presidential memoranda, CBP is issuing this RFI to gather information on the extent to which the existing agency processes, programs, regulations, collections of information, and policies under the authority of title 19 of the CFR, chapter I: (1) Perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups; (2) do not bolster resilience to the effects of climate change; and (3) address the disproportionately high and adverse climate-related effects on disadvantaged communities. Among other things, CBP seeks concrete information about unnecessary or unjustified administrative burdens that may create systemic barriers to the importation of merchandise into the United States.

It is important to note that CBP continually evaluates its programs and policies, as well as its regulatory framework, for rules that are candidates for modification, streamlining, expansion, or repeal. CBP does so through legally mandated review requirements (*e.g.,* Unified Agenda reviews, 5 U.S.C. 601, *et seq.,* and reviews under section 610 of the Regulatory Flexibility Act, 5 U.S.C. 610) and through other informal and long-established mechanisms (*e.g.,* use of Federal Advisory Committees such as the Commercial Customs Operations Advisory Committee (COAC), feedback from CBP field personnel, input from internal working groups, and outreach to regulated entities and the public). This **Federal Register** notice supplements these existing, extensive CBP regulatory and program review efforts.

III. CBP's Operational Programs

CBP operates in 106 countries; serves at 328 ports of entry within the United States; safeguards roughly 7,000 miles of land border and 95,000 miles of shoreline; and patrols the associated air and maritime spaces. On a typical day in fiscal year (FY) 2021, CBP: Welcomed into the United States 121,516 incoming international air passengers and crew; 8,094 passengers arriving on ships/boats; 362,078 incoming land travelers; stopped more than 264 pests at U.S. ports of entry and quarantined 2,548 materials, including plant, meat, animal byproduct, and soil; and seized 4,732 pounds of drugs, approximately $342,000 of illicit currency, and approximately $9,000,000 worth of merchandise that was in violation of the Intellectual Property Rights laws.[8] As part of its law enforcement function, on a typical day in FY 2021, CBP conducted 1,703 apprehensions between U.S. ports of entry; 25 arrests of wanted criminals at U.S. ports of entry; and 723 refusals of inadmissible persons at U.S. ports of entry.[9] As part of its trade enforcement and revenue protection responsibilities, on a typical day in FY 2021, CBP collected approximately $256 million in duties, taxes, and other fees, including approximately $234 million in duties.[10]

CBP's mission is to protect the American people, safeguard our borders, and enhance the Nation's economic prosperity. As a part of CBP's law enforcement mission, and in order to protect the American people and safeguard our borders, it is CBP's policy to prohibit the consideration of race or ethnicity in law enforcement, investigation, and screening activities, in all but the most exceptional

[2] 86 FR 7037 (Jan. 25, 2021).

[3] 86 FR 7619 (Feb. 1, 2021).

[4] 76 FR 3821 (Jan. 21, 2011).

[5] 86 FR 7223 (Jan. 26, 2021).

[6] 80 FR 56365 (Sep. 18, 2015).

[7] 86 FR 8845 (Feb. 10, 2021).

[8] *https://www.cbp.gov/newsroom/stats/typical-day-fy2021* (describing CBP's typical activities on an average day from October 1, 2020 through September 30, 2021, including those conducted during the COVID–19 pandemic, as compiled and reported by CBP on January 3, 2022).

[9] *Id.*

[10] *Id.*

circumstances.[11] To enhance the Nation's economic mission, CBP continuously works to develop legal and operational changes that embrace 21st Century processes and emerging technologies to better secure national and economic security, enhance data integrity, account for emerging actors and business practices, and better facilitate trade by reducing financial and administrative burdens and constraints in customs transactions.

CBP's core values are vigilance, service to country, and integrity. CBP's vision is to enhance the Nation's security through innovation, intelligence, collaboration and trust.[12] The agency carries out its trade mission under the authority of title 19 of the CFR, Chapter I[13] through the Air and Marine Operations (AMO), United States Border Patrol (BP), Office of Field Operations (OFO), the Office of Trade (OT), multiple program offices, and ten regional offices located throughout the United States.[14]

Of CBP's four operational offices (AMO, BP, OFO, and OT), AMO applies advanced aeronautical and maritime capabilities and employs its unique skill sets to preserve America's security interests. With 1,800 Federal agents and mission support personnel, 240 aircraft and 300 marine vessels operating throughout the United States, Puerto Rico, and the U.S. Virgin Islands, AMO uses its sophisticated fleets to detect, sort, intercept, track and apprehend criminals in diverse environments at and beyond U.S. borders. AMO program offices include Operations, Mission Support, National Air Security Operations, and Training and Safety Standards.

BP is the primary Federal law enforcement organization responsible for preventing terrorists and their weapons from entering the United States between official CBP ports of entry. BP is also responsible for preventing the illicit trafficking of people and contraband between the official ports of entry. BP, which has a work force of more than 20,000 agents and 2,000 mission support personnel, is specifically responsible for patrolling the 6,000 miles of Mexican and Canadian international land borders and 2,000 miles of coastal waters surrounding the Florida Peninsula and the island of Puerto Rico. Agents work around the clock on assignments, in all types of terrain and weather conditions. Agents also work in many isolated communities throughout the United States.

OFO was built upon the legacy U.S. Customs Service and traces its history back to when the agency was established on July 31, 1789. On March 1, 2003, a majority of employees from the legacy U.S. Customs Service were transitioned into CBP under DHS. The merger also included and incorporated the separate border inspection functions of the Department of Agriculture and the former Immigration and Naturalization Service into CBP's OFO. Today, OFO has more than 32,000 employees, uniformed and non-uniformed, located throughout the United States and around the world. By guarding America's borders, welcoming lawful visitors, and facilitating legitimate trade, OFO plays a vital role in protecting our national security and ensuring our economic prosperity. OFO is comprised of the following program offices: Admissibility and Passenger Programs; Agriculture Programs and Trade Liaison; Cargo and Conveyance Security; Mission Support; National Targeting Center; Operations; and Planning, Program Analysis and Evaluation.

OFO also houses the 10 CBP Centers of Excellence and Expertise (Centers): (1) Agriculture and Prepared Products; (2) Apparel, Footwear and Textiles; (3) Automotive and Aerospace; (4) Base Metals; (5) Consumer Products and Mass Merchandising; (6) Electronics; (7) Industrial and Manufacturing Materials; (8) Machinery; (9) Petroleum, Natural Gas and Minerals; and (10) Pharmaceuticals, Health and Chemicals.[15] The Centers are responsible for performing certain trade functions and making certain determinations as set forth in particular regulatory provisions regarding importations by importers who are considered by CBP to be in the industry sector, regardless of the ports of entry at which the importations occur. Industry sectors are categorized by the Harmonized Tariff Schedule of the United States (HTSUS) numbers representing an industry sector.[16]

OT consolidates the trade policy, program development, and compliance measurement functions of CBP into one office and provides uniformity and clarity for the development of CBP's national strategy to facilitate legitimate trade. OT manages the design and implementation of results-driven strategic initiatives for trade compliance and enforcement. OT also directs national enforcement responses through effective targeting of goods crossing the border as well as strict, swift punitive actions against companies participating in predatory trade practices. Through coordination with international partners and other U.S. government agencies, OT directs the enforcement of intellectual property rights, the identification of risks to detect and prevent the importation of contaminated agricultural or food products, and the enforcement of trade agreements.

By promoting trade facilitation through partnership programs, OT streamlines the flow of legitimate shipments and fosters corporate self-governance as a means of achieving compliance with trade laws and regulations. OT's risk-based audit program is used to respond to allegations of commercial fraud and to conduct corporate reviews of internal controls to ensure importers comply with trade laws and regulations. OT provides the legal tools to promote trade facilitation and compliance with customs, trade and border security requirements through the issuance of all CBP regulations, legally binding advance rulings and administrative decisions, informed compliance publications (ICPs) and structured programs for external CBP training, and outreach on international trade laws and CBP regulations.

OT is comprised of the following Directorates that interact with the public: Operations, Regulations and Rulings, Trade Remedy Law Enforcement, Trade Policy and Programs, Trade Transformation Office, and Regulatory Audit and Agency Advisory Services. OT directs the development and implementation of matters relating to CBP's Priority Trade Initiatives (PTIs), which include: (1) Agriculture and Quota; (2) Antidumping and Countervailing Duty (AD/CVD); (3) Import Safety; (4) Intellectual Property Rights; (5) Revenue; (6) Textiles/ Wearing Apparel; and (7) Trade Agreements.[17] In addition to the PTIs, OT is responsible for the Single Window (*e.g.,* the Automated Commercial Environment), audit programs, and the development of CBP's vision under the 21st Century Customs Framework. Additionally, OT has a legal responsibility to issue administrative rulings in response to

[11] *https://www.cbp.gov/about/eeo-diversity/policies/nondiscrimination-law-enforcement-activities-and-all-other-administered* (describing CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs).

[12] *https://www.cbp.gov/about.*

[13] CBP's immigration authority can be found in title 8 of the CFR, Chapter I.

[14] *About CBP | U.S. Customs and Border Protection.*

[15] *https://www.cbp.gov/trade/centers-excellence-and-expertise-information/cee-directory.*

[16] 19 CFR 101.10.

[17] *https://www.cbp.gov/trade/priority-issues.*

requests from the trade community; to respond to petitions for relief from the seizure and forfeiture of merchandise and the assessment of civil penalties; [18] to inform the public about CBP trade policies through ICPs; [19] to ensure that its rulings are made publicly available through the Customs Rulings Online Search System (CROSS); [20] and to maintain a public directory of recorded trademarks and copyrights that receive border enforcement through CBP's e-Recordation program.[21]

There are two offices that provide essential support to CBP's operational offices, which are described above. The first is the Office of Operations Support, which includes the Laboratories and Scientific Services Directorate, Office of Intelligence, Office of International Affairs, CBP Watch, Planning, Analysis, and Requirements Evaluation Directorate, Law Enforcement Safety and Compliance Directorate, Mission Support Division, and Office of the Chief Medical Officer. The second is Enterprise Services (ES). The offices under ES, including Accountability, Acquisition, Facilities and Asset Management, Human Resources Management, Information and Technology, Programming, and Training and Development, provide key support for both CBP's frontline operators and non-frontline entities.

CBP seeks specific input from the public regarding the processes, programs, regulations, collections of information, and policies implemented by its operational and support offices under the authorities specified in title 19 of the CFR, chapter I. CBP is seeking information and input from the public regarding these key programs and the related regulations and policies as part of the agency's efforts to ensure that it is operating its programs in compliance with the executive orders detailed above.

IV. Public Participation

A. Importance of Public Feedback

A central tenet of each of the executive orders discussed above is the critical and essential role of public input in driving and focusing CBP review of its existing processes, programs, regulations, collections of information, and policies. Because the effects of Federal regulations and policies tend to be widely dispersed in society, members of the public are likely to have useful information, data, and perspectives on the benefits and burdens of CBP's existing processes, programs, regulations, information collections, and policies. Given the importance of public input, CBP is seeking specific public feedback to facilitate these program reviews in the context of equity for all, including those in underserved communities, bolstering resilience to the effects of climate change, particularly for those disproportionately affected by climate change, and that advance and prioritize environmental justice. This is especially of concern in these times of racial unrest and uncertainty, and in this period in which disasters of many kinds have become more common, and where science has been called into question as a reliable factor upon which to base our decisions. It is essential to reevaluate CBP's programs to reduce unnecessary barriers to participation and effectiveness, and to serve all communities, to increase equity.

B. Maximizing the Value of Public Feedback

This notice contains a list of questions, the answers to which will assist CBP in identifying those processes, programs, regulations, collections of information, and policies under its title 19 of the CFR, chapter I authorities that may benefit from modification, streamlining, expansion, or repeal in light of the executive orders. CBP encourages public comment on these questions and seeks any other data that commenters believe are relevant to CBP's efforts to review whether CBP policies and actions: (1) Create or exacerbate barriers to full and equal participation by all eligible individuals; (2) rely upon science to ensure access to clean air and water; limit exposure to dangerous chemicals and pesticides; hold polluters accountable; reduce greenhouse emissions; hinder or bolster resilience to the impacts of climate change; restore and expand our national treasures and monuments, and prioritize both environmental justice and the creation of well-paying union jobs to deliver on these goals; and (3) factor the effects of climate change in the Arctic, along our Nation's borders, and to National critical functions—including climate risks.

The type of feedback that is most useful to the agency includes feedback that identifies specific processes, programs, regulations, information collections, and/or policies that could benefit from reform; feedback that refers to specific barriers to participation; feedback about how to improve risk perception; feedback that offers actionable data; and feedback that specifies viable alternatives to existing approaches that meet statutory obligations. For example, feedback that simply states that a stakeholder feels strongly that CBP should change a regulation, but does not contain specific information on how the proposed change would affect the costs and benefits of the regulation, is much less useful to CBP. CBP is looking for new information and new data to support any proposed changes that further the goals of advancing equity for all, including those in underserved communities, protecting public health and the environment, restoring science, and bolstering resilience from the effects of climate change, particularly for those disproportionately affected by climate change, and advancing and prioritizing environmental justice.

Highlighted below are a few of those points, noting comments that are most useful to CBP, guided by corresponding principles. Commenters should consider these principles as they answer and respond to the questions in this notice.

- Commenters should identify, with specificity, the program, regulation, information collection, and/or policy at issue, providing the applicable Code of Federal Regulation (CFR) citation where appropriate.
- Commenters should identify, with specificity, administrative burdens, program requirements, information collection burdens, waiting time, or unnecessary complexity that may impose unjustified barriers in general, or that may have adverse effects on equity for all, including individuals who belong to underserved communities that have been denied equitable treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.
- Commenters should identify, with specificity, small or large reforms that might be justified in light of the risks posed by climate change, whether those reforms involve preparedness, mitigation, or other steps to reduce suffering.
- Commenters should provide specific data that document the costs, burdens, and benefits of existing requirements to the extent they are available. Commenters might also

[18] *https://www.cbp.gov/trade/programs-administration/penalties.*

[19] *https://www.cbp.gov/trade/rulings/informed-compliance-publications.*

[20] *https://rulings.cbp.gov/home.*

[21] *https://iprr.cbp.gov/; https://iprs.cbp.gov/; https://www.cbp.gov/trade/priority-issues/ipr/protection.*

address how CBP can best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing programs and regulations and whether there are existing sources of data that CBP can use to evaluate the post-promulgation effects of its regulations over time as they affect advancing equity for all, including those in underserved communities, protecting public health and the environment, restoring science, and bolstering resilience from the effects of climate change, particularly for those disproportionately affected by climate change and environmental justice.

- Particularly where comments relate to a program's costs or benefits, comments will be most useful if there are data and experience under the program available to ascertain the program's actual effect on the goals of advancing equity for all, including those in underserved communities, protecting public health and the environment, restoring science, and bolstering resilience from the effects of climate change, particularly for those disproportionately affected by climate change, and promoting and protecting our public health and the environment by advancing and prioritizing environmental justice.

C. List of Questions for Commenters

The below non-exhaustive list of questions is meant to assist members of the public in the formulation of comments regarding whether CBP's policies and actions advance equity for all, including those in underserved communities; protect public health and the environment; restore science; and bolster resilience from the effects of climate change, particularly for those disproportionately affected by climate change; and promoting and protecting our public health and the environment by advancing and prioritizing environmental justice. This list is not intended to restrict the issues that commenters may address. CBP compiled a list of specific questions that may be answered as if applicable to any of CBP's programs under its title 19 of the CFR, chapter I authorities.

Specific Questions

(1) Are there CBP processes, programs, regulations, information collections, forms, required documentation, guidance and/or policies that perpetuate systemic barriers to opportunities and benefits for people of color and/or other underserved groups as defined in Executive Order 13985 and, if so, what are they? How can those programs, regulations, and/or policies be modified, expanded, streamlined, or repealed to deliver resources and benefits more equitably?

(2) Are there CBP processes, programs, regulations, information collections, forms, required documentation, guidance and/or policies that hinder or do not bolster resilience to the effects of climate change, particularly for those disproportionately affected by climate change, and, if so, what are they? How can those programs, regulations, and/or policies be modified, expanded, streamlined, or repealed to bolster resilience to the effects of climate change?

(3) Are there CBP processes, programs, regulations, information collections, forms, required documentation, guidance and/or policies that do not promote environmental justice? How can those programs, regulations, and/or policies be modified, expanded, streamlined, or repealed to promote environmental justice?

(4) Are there CBP processes, programs, regulations, information collections, forms, required documentation, guidance and/or policies that are unnecessarily complicated or that could be streamlined to achieve the objectives of equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, so as to bolster resilience to climate change and/or address the disproportionately high and adverse climate change-related effects on disadvantaged communities in more efficient ways? If so, what are they and how can they be made less complicated and/or streamlined?

(5) Are there any CBP regulations and/or policies that create duplication, overlap, complexity, or inconsistent requirements within CBP programs, other DHS components, or any other Federal Government agencies that affect equity, resilience to the effects of climate change, and/or environmental justice? If so, what are they and how can they be improved or updated to meet the required objectives of racial equity, resiliency, and environmental justice?

(6) Are there existing sources of data that CBP can use to evaluate the post-promulgation effects of regulations over time? Or are there sources of data that CBP can use to evaluate the effects of CBP policies or regulations on equity for all, including individuals who belong to underserved communities?

(7) What successful approaches to advance equity and climate resilience have been taken by State, local, Tribal, and territorial governments, and in what ways do CBP's programs present barriers or opportunities to successful implementation of these approaches?

CBP notes that this RFI is solely for information and program-planning purposes. While CBP intends to fully consider all input received from the public in response to this RFI, CBP will not respond individually to comments and none of the comments submitted will bind CBP to take any specific actions.

Chris Magnus, Commissioner, having reviewed and approved this document, is delegating the authority to electronically sign this document to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the **Federal Register**.

Dated: April 19, 2022.

Robert F. Altneu,

Director, Regulations & Disclosure Law Division, Regulations & Rulings, Office of Trade, U.S. Customs and Border Protection.

[FR Doc. 2022–08664 Filed 4–21–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA—FEMA–2022–0014; OMB No. 1660–0073]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to take this opportunity to comment on an extension, with change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the National Urban Search and Rescue Response System to perform work on public or private lands essential to save lives and protect property, including search and rescue and emergency medical care, and other essential needs. FEMA will remove one instrument from this collection.

DATES: Comments must be submitted on or before June 21, 2022.

ADDRESSES: To avoid duplicate submissions to the docket, please only submit comments at *www.regulations.gov* under Docket ID FEMA—FEMA–2022–0014. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Buddy Ey, Chief, Finance and Administration Section, US&R Branch, FEMA, Response Directorate, Operations Division at *elwood.ey-iii@fema.dhs.gov* or (202) 212–3799. You may contact the Information Management Division for copies of the proposed collection of information at email address: *FEMA/Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Section 303 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5144, authorizes the President of the United States to form emergency support teams of Federal personnel to be deployed to an area affected by major disaster or emergency. Section 403(a)(3)(B) of the Stafford Act provides that the President may authorize Federal Departments and Agencies to perform work on public or private lands essential to save lives and protect property, including search and rescue and emergency medical care, and other essential needs. Section 327 of the Stafford Act further authorizes the National Urban Search and Rescue Response System (''the System'') and outlines the Administrator's authorization to designate teams as well as outlines specific protections for System members. The information collection activity is authorized under the Office of Management and Budget circular, 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.'' The collection contains information from the programmatic and administrative activities of the Urban Search and Rescue Sponsoring Agencies relating to the readiness and response cooperative agreement awards.

FEMA will remove one instrument from this collection: FEMA Form 089–0–15, Task Force Deployment Data.

Collection of Information

Title: National Urban Search and Rescue Response System.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0073.

FEMA Forms: FEMA Form FF–104–FY–21–174 (formerly 089–0–10), Urban Search Rescue Response System Narrative Statement Workbook; FEMA Form FF–104–FY–21–175 (formerly 089–0–11), Urban Search Rescue Response System Semi-Annual Performance Report; FEMA Form FF–104–FY–21–176 (formerly 089–0–12), Urban Search Rescue Response System Amendment Form; FEMA Form FF–104–FY–21–177 (formerly 089–0–14), Urban Search Rescue Response System Task Force Self-Evaluation Scoresheet; FEMA Form FF–104–FY–21–179 (formerly 089–0–26), Vehicle Support Unit Purchase/Replacement/Disposal Justification.

Abstract: The information collection activity is the collection of program and administrative information from 28 established Urban Search and Rescue Sponsoring Agencies relating to the Readiness and Response Cooperative Agreement awards. This information includes a narrative statement used to evaluate a grantees' proposed use of funds, progress reports to monitor progress on Cooperative Agreements, amendment requests to change scope and period of performance and approval for vehicle purchase.

Affected Public: State, Local, or Tribal Government.

Estimated Number of Respondents: 126.

Estimated Number of Responses: 182.

Estimated Total Annual Burden Hours: 364.

Estimated Total Annual Respondent Cost: $23,277.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $135,866.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2022–08618 Filed 4–21–22; 8:45 am]

BILLING CODE 9111–54–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement, Department of Homeland Security

[OMB Control Number 1653–0042]

Agency Information Revision of a Currently Approved Collection: Obligor Change of Address

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reductions Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance. This information collection was previously published in the **Federal Register** on February 17, 2022, allowing for a 60-day comment period. ICE received one comment in connection with the 60-day notice. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until May 23, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of the 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: If you have questions related to this collection call or email Melinda Jones, ERO, (202) 271–9855, *melinda.a.jones@ice.dhs.gov.* (This is not a toll-free number. Comments are not accepted via telephone message).

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Obligor Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–333; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. The data collected on this form is used by ICE to ensure accuracy in correspondence between ICE and the obligor. The form serves the purpose of standardizing obligor notification of any changes in their address, and will facilitate communication with the obligor. The collection revision is to use non-citizen in place of alien in the body of the form. ICE is adjusting the burden figures from the 60-day notice based on better estimates of the number of applications received.

(5) *An estimate of the total number of respondents and the time to respond:* ICE estimates a total of 1,552 responses at 15 minutes (0.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden is 388 hours.

Dated: April 19, 2022.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2022–08640 Filed 4–21–22; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2022–N230; FXES11140100000–223–FF01E0000]

Western Oregon State Forests Habitat Conservation Plan and Incidental Take Permit Application; Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), have received an incidental take permit (ITP) application from the Oregon Department of Forestry (ODF), associated with the Western Oregon State Forests habitat conservation plan (HCP), pursuant to the Endangered Species Act. If granted, the ITP would authorize incidental take resulting from activities and conservation activities carried out as part of the HCP conservation strategy. We invite review of and comment on the ITP application and the HCP from local, State, and Federal agencies; Tribes; and the public. A draft environmental impact statement, provided by the National Marine Fisheries Service (lead agency under the National Environmental Policy Act), is also available for review.

DATES: Comments must be received no later than June 1, 2022. Any comments received after the closing date may not be considered in the final decision on these actions.

ADDRESSES: *Submitting Comments:* You may submit comments in either of the following ways:

Internet: Go to *https://www.regulations.gov* and enter NOAA–NMFS–2021–0019 in the Search Box. Follow the instructions for submitting comments on NOAA–NMFS–2021–0019. (This is a NOAA docket, because NOAA is the lead agency under NEPA.) Please specify whether your comments pertain to the Draft EIS or the HCP, and reference specific sections and/or page numbers. Written comments to any other address or individual, or received after the end of the comment period, may not be considered by FWS. All comments received are part of the public record and will generally be posted for public viewing on *https://www.regulations.gov.* All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. FWS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Virtual Public Meeting: In its notice of March 18, 2022 (87 FR 15383), NMFS announced a virtual public meeting for April 6, 2022, during which oral comments would be accepted regarding the ITP applications, HCP, and Draft EIS.

If you have already submitted comments on FWS or NMFS species in response to the NMFS notice in writing, or orally at the public meeting on April 6, 2022, you do not need to resubmit them in response to this notice for them to be considered.

Obtaining Documents for Review: The Draft HCP and draft EIS are available for review online at *https://www.fisheries.noaa.gov/action/western-oregon-state-forests-habitat-conservation-plan* and at *https://www.regulations.gov* in Docket No. NOAA–NMFS–2021–0019.

FOR FURTHER INFORMATION CONTACT: Joe Zisa, FWS, by phone at 503–231–6961 or via email at *Joe_Zisa@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (FWS), have received an incidental take permit (ITP) application from the Oregon Department of Forestry (ODF), associated with the Western Oregon State Forests habitat conservation plan (HCP), pursuant to the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). If granted, the ITP would authorize the incidental take of the species included in the HCP, resulting from the activities and conservation activities carried out as part of the HCP conservation strategy.

The National Marine Fisheries Service (NMFS) also received an ITP application associated with the same HCP, and on March 18, 2022, published (87 FR 15383) a notice of the availability inviting comment on the ITP applications, the HCP, and a draft environmental impact statement (Draft EIS) analyzing the potential effects of issuance of the respective ITPs by NMFS and FWS. NMFS is the lead Federal agency under the National Environmental Policy Act of 1969, as amended (NEPA), for this draft EIS.

At this time, FWS issues this additional **Federal Register** notice to confirm that (a) FWS has received the ODF ITP application and HCP regarding species under FWS's jurisdiction, and (b) FWS is inviting public comment on FWS's consideration of the ITP and HCP, in conformance with ESA section 10(c), through the same comment period process contained in the above-referenced NMFS notice (87 FR 15383).

ESA-Listed Species Under FWS Jurisdiction Included in the HCP

- Northern spotted owl (*Strix occidentalis*): Threatened
- Marbled murrelet (*Brachyramphus marmoratus*): Threatened
- Coastal marten (*Martes caurina*): Threatened coastal distinct population segment (DPS)

Non-ESA-Listed Species Addressed by the FWS Included in the HCP

- Oregon slender salamander (*Batrachoseps wrighti*)
- Columbia torrent salamander (*Rhyacotriton kezeri*)
- Cascade torrent salamander (*Rhyacotriton cascadae*)
- Red tree vole (*Arborimus longicaudus*)

Species included in the HCP addressed by NMFS are identified in the NMFS notice of availability (87 FR 15383).

Background

Section 9 of the ESA and its Federal regulations prohibit the taking of a species listed as endangered or threatened. The ESA defines ''take'' to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. FWS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities pursuant to section 10(a)(1)(B) of the ESA and its implementing regulations (50 CFR 17.22(b) and 17.32(b)). On February 9, 2020, NMFS and FWS received separate applications from ODF for ITPs to authorize take of the above-mentioned species that may occur incidental to ODF's forest and recreation management activities. These activities are identified in the NMFS notice of availability (87 FR 15383). The ITP applications and HCP also include non-listed species; take coverage would become effective for these species if and when they become listed during the permit term. The HCP specifies the impacts that will likely result from the taking of the species and describes the steps that ODF will take to minimize and mitigate such impacts.

The proposed issuance of the ITPs is considered a Federal action under NEPA, and NMFS determined that preparation of an EIS to analyze the potential impacts on the human environment was appropriate. A Draft EIS was prepared by NMFS in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), with input from FWS as a cooperating agency. Further information regarding the Draft EIS is described in the NMFS notice of availability (87 FR 15383).

In regard to the ITP application to the FWS and the supporting HCP, and as noted in the NMFS notice of availability, we specifically request information on the following:

1. Biological information, analysis, and relevant data concerning the covered species under FWS jurisdiction, other wildlife, and ecosystems.

2. Potential effects that the proposed permit actions could have on the covered species under FWS jurisdiction, and other endangered or threatened species, and their habitats, including the interaction of the effects of the project with climate change and other stressors.

3. Adequacy of the proposed action to minimize and mitigate the impact of the taking on covered species.

4. Other information relevant to the HCP.

FWS and NMFS (the Services) will each make their permit decisions based on the statutory and regulatory criteria of the ESA. Their decisions will also be informed by the data, analyses, and findings in the EIS and public comments received on the Draft EIS and HCP accompanying the ITP applications. The Services will each document their determinations independently in an ESA section 10 findings document, ESA section 7 biological opinion, and NEPA Record of Decision (ROD) developed at the conclusion of the ESA and NEPA compliance processes. If the Services find that all requirements for issuance of the ITPs are met, they will issue the requested permits, subject to terms and conditions deemed necessary or appropriate to carry out the purposes of ESA section 10.

Authority

Section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 50 CFR 17.32).

Robyn Thorson,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–08663 Filed 4–21–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R8–ES–2021–0164; FXES11140800000–223–FF08ECAR00]

Receipt of Application for Renewal of Incidental Take Permit; Low-Effect Habitat Conservation Plan for the Threatened Coastal California Gnatcatcher, Los Angeles County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit renewal application; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Monterey Park Retail Partners, LLC, for renewal of an incidental take permit pursuant to the Endangered Species Act. The applicant has requested a renewal that will extend permit authorization by 5 years from the date the permit is reissued. The permit would authorize take of the federally threatened coastal California gnatcatcher, incidental to otherwise lawful activities associated with the low-effect habitat conservation plan (HCP) for the Monterey Park Market Place Project in Los Angeles County, California. If the permit is renewed, no additional take above the original authorized limit of up to three pairs of coastal California gnatcatcher associated with permanent removal of 2.77 acres of coastal sage scrub and 9.12 acres of mulefat scrub and ruderal vegetation within the 62-acre development area will be authorized. We invite the public and local, State, Tribal, and Federal agencies to comment on the application, which includes the applicant's current HCP. In accordance with the requirements of the National Environmental Policy Act (NEPA), we have prepared a draft low-effect screening form supporting our preliminary determination that the proposed action qualifies for a categorical exclusion under NEPA. To

make this determination, we reassessed our environmental action statement and low-effect screening form prepared for the current HCP, and this draft NEPA compliance documentation is also available for public review.

DATES: We must receive your written comments on or before May 23, 2022.

ADDRESSES: *Document availability:* Electronic copies of the documents this notice announces, along with public comments received, will be available online in Docket No. FWS–R8–ES–2021–0164 at *https://www.regulations.gov.*

Comment submission: In your comment, please specify whether your comment addresses the proposed HCP, draft environmental action statement, or any combination of the aforementioned documents, or other supporting documents. You may submit written comments by one of the following methods:

- *Online: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–R8–ES–2021–0164.
- *By hard copy:* Submit comments by U.S. mail to Public Comments Processing, Attn: Docket No. FWS–R8–ES–2021–0164; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB/3W; Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan D. Snyder, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office, 760–431–9440. 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 telecommunicators relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have received an application from Monterey Park Retail Partners, LLC (applicant), to renew incidental take permit TE20536C–0 under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant has requested a renewal that would extend the permit authorization by 5 years from the date the permit is reissued. The existing permit is valid from February 6, 2017, to February 6, 2022. The applicant has agreed to follow all of the existing habitat conservation plan (HCP) conditions. The permit would authorize take of the federally threatened coastal California gnatcatcher (*Polioptila californica californica*), incidental to otherwise lawful activities associated with the low-effect HCP for the Monterey Park Market Place Project. If the permit is renewed, no additional take above the original authorized limit of up to three pairs of coastal California gnatcatcher associated with permanent removal of 2.77 acres of coastal sage scrub and 9.12 acres of mulefat scrub and ruderal vegetation within the 62-acre development area will be authorized.

We invite the public and local, State, Tribal, and Federal agencies to comment on the application, which includes the applicant's current low-effect HCP and our preliminary determination that the proposed action is categorically excluded under NEPA. To make this determination, we reassessed our environmental action statement and low-effect screening form prepared for the current HCP, and this draft NEPA compliance documentation is also available for public review.

Background

The coastal California gnatcatcher was listed by the Service as threatened on March 30, 1993 (58 FR 16742). Section 9 of the ESA and its implementing Federal regulations prohibit the ''take'' of animal species listed as endangered or threatened. ''Take'' is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct'' (16 U.S.C. 1538). ''Harm'' includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed species. ''Incidental taking'' is defined by the ESA implementing regulations as taking that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32. Issuance of an incidental take permit also must not be likely to jeopardize the continued existence of any federally listed fish, wildlife, or plant species. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The applicant has applied for the renewal of their permit for incidental take for the threatened coastal California gnatcatcher. The potential taking would occur by activities associated with the construction of a commercial development (as defined in the HCP) in an area that supports suitable habitat for the covered species. The project is located on an approximately 62-acre property in Monterey Park, Los Angeles County, California. An incidental take permit was first issued for the HCP on February 6, 2017, and will expire on February 6, 2022.

Public Availability of Comments

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.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1539) and NEPA regulations at 40 CFR 1506.6.

Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2022–08634 Filed 4–21–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact in the State of South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Amendment to the Gaming Compact (Amendment) between the Standing Rock Sioux Tribe (Tribe) and the State of South Dakota (State).

DATES: The Amendment takes effect on April 22, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the

Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment permits the Tribe to operate sports wagering within the Standing Rock Sioux Reservation, defines terms for sports wagering and requires the Tribe to meet or exceed South Dakota's hardware and software specifications. The Amendment is approved.

Wizipan Garriott,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising by delegation the authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2022–08652 Filed 4–21–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CRPS–NPS0033332; PPWOCRADI0, PPMRSCR1Y.Y00000, P103601 (222); OMB Control Number 1024–0271]

Agency Information Collection Activities; Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before June 21, 2022.

ADDRESSES: Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive, (MS–242), Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–0271'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR) by mail, contact Dorothy FireCloud, Native American Affairs Liaison, National Park Service, 1849 C Street NW, Mail Stop 7360, Washington, DC 20240; or by email at *dorothy_firecloud@nps.gov* or by telephone at 928–821–5831. 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. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve 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 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.

Abstract: Gathering and removing plants or plant parts is currently prohibited in National Park System areas unless specifically authorized by Federal statute or treaty rights or conducted under the limited circumstances authorized by an existing regulation codified in 36 CFR 2.1(c). Regulations codified in 36 CFR part 2 allow the gathering and removal of plants or plant parts by enrolled members of federally recognized tribes for traditional purposes. The regulations authorize agreements between the NPS and federally recognized tribes to facilitate the continuation of tribal cultural practices on lands within areas of the National Park System where those practices traditionally occurred, without causing a significant adverse impact to park resources or values. The regulations:

- Respect tribal sovereignty and cultural practices,
- further the government-to-government relationship between the United States and the Indian Tribes, and
- provide system-wide consistency for this aspect of NPS-Tribal relations.

The agreements explicitly recognize the special government-to-government relationship between the United States and Indian Tribes and are based upon mutually agreed upon terms and conditions subject to the requirements of 36 CFR 2.6(f). The agreements serve as the documents through which the NPS authorizes tribal gathering implemented by an accompanying permit authorized by 36 CFR 1.6. Only enrolled members of a federally recognized tribe are allowed to collect plants or plant parts, and the tribe must be traditionally associated with the specific park area. This traditional association must predate the establishment of the park. The plant gathering must meet a traditional purpose that is a customary activity and practice rooted in the history of the tribe and is important for the continuation of the tribe's distinct culture. Authorized plant gathering must be sustainable and may not result in a significant adverse impact on park resources or values. The sale and commercial use of plants or plant parts within areas of the National Park System will continue to be prohibited by the NPS regulations in 36 CFR 2.1(c)(3)(v).

The information collections associated with 36 CFR part 2 include:

(1) The initial request from a tribe that we enter into an agreement with the tribe for gathering and removal of plants or plant parts for traditional purposes. The request must include the information specified in § 2.6(c).

(2) The agreement defines the terms under which the NPS may issue a permit to a tribe for plant gathering purposes. To make determinations based upon tribal requests or to enter into an agreement, we may need to collect information from specific tribal members or tribes who make requests. The agreement must contain the information specified in § 2.6(f).

(3) Tribes may submit an appeal to the NPS to provide additional information on historical relationship of the tribe, traditional uses of plants to be gathered, and/or the impact of gathering on the resource of concern in the event of a denial by the NPS on this issue.

Title of Collection: Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes, 36 CFR 2.

OMB Control Number: 1024–0271.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Indian Tribes.

Total Estimated Number of Annual Responses: 30.

Estimated Completion Time per Response: Varies between 4 hours and 80 hours depending on respondent and/or activity.

Total Estimated Number of Annual Burden Hours: 530 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2022–08604 Filed 4–21–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033739; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Putnam Museum and Science Center, Davenport, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Putnam Museum and Science Center, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural items listed in this notice meet the definition of unassociated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request to the Putnam Museum and Science Center. If no additional claimants come forward, transfer of control of the cultural items to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to the Putnam Museum and Science Center at the address in this notice by May 23, 2022.

FOR FURTHER INFORMATION CONTACT: Christina Kastell, Putnam Museum and Science Center, 1717 W 12th Street, Davenport, IA 52804, telephone (563) 336–7293, email *ckastell@putnam.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the Putnam Museum and Science Center, Davenport, IA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Sometime in the 1880s, six cultural items were removed from the Mississippi Valley in AL and MS. Captain W.P. Hall excavated these items. Subsequently, Miss Elizabeth Duncan Putnam donated these items to the museum. The six unassociated funerary objects are two Bell Plain Bowls, one miniature bowl, one animal effigy sherd, one ear plug, and one pipe fragment.

These items have been determined to derive from Mississippian burial mounds in AL and MS. Based on this geographical and archeological information, they are connected to The Choctaw Nation of Oklahoma.

Determinations Made by the Putnam Museum and Science Center

Officials of the Putnam Museum and Science Center have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the six cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and The Choctaw Nation of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim these cultural items should submit a written request with information in support of the claim to Christina Kastell, Putnam Museum and Science Center, 1717 W 12th Street, Davenport, IA 52804, telephone (563) 336–7293, email *ckastell@putnam.org,* by May 23, 2022. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary objects to The Choctaw Nation of Oklahoma may proceed.

The Putnam Museum and Science Center is responsible for notifying The Choctaw Nation of Oklahoma that this notice has been published.

Dated: April 13, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08601 Filed 4–21–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033740; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Western Washington University, Department of Anthropology, Bellingham, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Western Washington University, Department of Anthropology, has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Western Washington University, Department of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Western Washington University, Department of Anthropology at the address in this notice by May 23, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Sarah Campbell, Western Washington University, Department of Anthropology, Arntzen Hall 315, 516 High Street, Bellingham, WA 98225, telephone (360) 650–4793, email *campbsk@wwu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Western Washington University, Department of Anthropology, Bellingham, WA. The human remains were removed from archeological site 45–SK–37, east of Dry Slough on Fir Island, Skagit County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Western Washington University, Department of Anthropology professional staff in consultation with representatives of the Swinomish Indian Tribal Community [*previously* listed as the Swinomish Indians of the Swinomish Reservation of Washington].

History and Description of the Remains

On May 7, 1960, human remains representing, at minimum, three individuals were removed from site 45–SK–37 in Skagit County, WA, by faculty member Herbert C. Taylor. Taylor was supervising a field school excavation for Western Washington State College, now known as Western Washington University. No known individuals were identified. No associated funerary objects are present.

The human remains have been determined to be Native American based on ethnographic, geographic, and archeological evidence. Suttles and Lane's ethnography of the Southern Coast Salish is particularly relevant, as it contains a map featuring some of the larger villages in the region (Suttles and Lane, 1990: Figure 1). Comparison of the location of site 45–SK–37 with Suttles and Lane's map indicates that it is in an area associated with Nookachamps, Kikiallus, and Swinomish. Many descendants of these cultural entities are today associated with the Swinomish Indian Tribal Community [*previously* listed as the Swinomish Indians of the Swinomish Reservation of Washington].

Determinations Made by Western Washington University, Department of Anthropology

Officials of Western Washington University, Department of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Swinomish Indian Tribal Community [*previously* listed as the Swinomish Indians of the Swinomish Reservation of Washington].

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Sarah Campbell, Western Washington University, Department of Anthropology, Arntzen Hall 315, 516 High Street, Bellingham, WA 98225, telephone (360) 650–4793, email *campbsk@wwu.edu,* by May 23, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Swinomish Indian Tribal Community [*previously* listed as the Swinomish Indians of the Swinomish Reservation of Washington] may proceed.

The Western Washington University, Department of Anthropology is responsible for notifying the Swinomish Indian Tribal Community [*previously* listed as the Swinomish Indians of the Swinomish Reservation of Washington] that this notice has been published.

Dated: April 13, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08603 Filed 4–21–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–BRD–NPS0033295; PWONRADB0 PPMRSNR1Y.NM00000 (222); OMB Control Number 1024–0265]

Agency Information Collection Activities; NPS Institutional Animal Care and Use Committee (IACUC) General Submission, Exhibitor, Annual Review, and Amendment Forms

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before June 21, 2022.

ADDRESSES: Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–

ICCO), 12201 Sunrise Valley Drive, (MS–242), Reston, VA 20191 (mail); or *phadrea_ponds@nps.gov* (email). Please include ''1024–0265'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR) by mail, contact Aaron Smith, NPS IACUC Administrator by mail at Biological Resource Division, 1201 Oakridge Drive, Suite 200, Fort Collins, CO, 80525; or by email at *aaron_d_smith@nps.gov.* You may also contact Dr. Laurie Baeten by email at *laurie_baeten@nps.gov* or telephone at (970) 966–0756. 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. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to the Office of Management and Budget (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 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.

Abstract: Pursuant to the Animal Welfare Act (AWA), its Regulations (AWAR), and the Interagency Research Animal Committee (IRAC), any entity or institution that uses vertebrate animals for research, testing, or training purposes must have an oversight committee to evaluate all aspects of that institution's animal care and use. To be in compliance, the NPS is responsible for managing and maintaining an Institutional Animal Care and Use Committee (IACUC) that has the experience and expertise necessary to assess and approve all research, testing, or training activities involving vertebrate animals on NPS managed lands and territories. All research, testing, or training projects involving animals taking place on NPS territories must be approved by the NPS IACUC prior to their commencement.

Principal Investigators (PI) are required to submit one of the following forms for consideration by the committee:

- IACUC General Submission (GS) Form (NPS Form 10–1301)
- IACUC Amendment Form (NPS Form 10–1301A)
- IACUC Annual Review Form (NPS Form 10–1302)
- IACUC Concurrence Form (NPS Form 10–1303)
- IACUC Field Study Form (NPS Form 10–1304)

As directed by the AWA, NPS IACUC is a self-regulating entity that currently consists of a Chair, NPS Regional members, and two additional members (a veterinarian serving as the ''Attending Veterinarian'' and another individual serving as the ''Unaffiliated Member at-Large'').

Title of Collection: NPS Institutional Animal Care and Use Committee (IACUC) General Submission, Annual Review, Concurrence, Field Study, and Amendment Forms.

OMB Control Number: 1024–0265.

Form Numbers: NPS Forms 10–1301, 10–1301A, 10–1302, 10–1303 and 10–1304.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and local governments; nonprofit organizations and private businesses.

Respondent's Obligation: Mandatory.

Total Estimated Annual Number of Responses: 230.

Estimated Completion Time per Response: Varies from 15 minutes to 3 hours depending on respondent and/or activity.

Total Estimated Annual Burden Hours: 140 Hours.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Respondent and forms	Annual number of responses	Completion time per form	Total burden (hours) *
State and Local Agencies:			
General Submission Form (NPS Form 10–1301)	14	3 hours	42
Amendment Form (NPS Form 10–1301A)	10	15 minutes	3
Annual Review Form (NPS Form 10–1302)	55	15 minutes	14
Field Study Form (NPS Form 10–1304)	10	1 hour	10
Concurrence Form (NPS Form 10–1303)	41	15 minutes	10
Subtotal	*130*		*79*
Private (non-profit):			
General Submission Form (NPS Form 10–1301)	10	3 hours	30
Amendment Form (NPS Form 10–1301A)	10	15 minutes	3
Annual Review Form (NPS Form 10–1302)	40	15 minutes	10

Respondent and forms	Annual number of responses	Completion time per form	Total burden (hours) *
Field Study Form (NPS Form 10–1304)	10	1 hour	10
Concurrence Form (NPS Form 10–1303)	30	15 minutes	8
Subtotal	*100*		*61*
Total	230		140

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2022–08600 Filed 4–21–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033741; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Maryland Center for History and Culture (Formerly Maryland Historical Society), Baltimore, MD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Maryland Center for History and Culture has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Maryland Center for History and Culture. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Maryland Center for History and Culture at the address in this notice by May 23, 2022.

FOR FURTHER INFORMATION CONTACT: Vivien Barnett, Curatorial & Collections Assistant, Maryland Center for History and Culture, 610 Park Avenue, Baltimore, MD 21201, telephone (410) 685–3750 Ext. 332, email *vbarnett@mdhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Maryland Center for History and Culture, Baltimore, MD. The human remains were removed from an unknown site in Nebraska.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Maryland Center for History and Culture professional staff in consultation with a representative of the Pawnee Nation of Oklahoma, Elizabeth Blackowl, and archeologists Ronald Thomas and Tyler Bastian.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, three individuals were removed from an unknown site in Nebraska. Subsequently, they entered the archeological collection of the Maryland Academy of Sciences. In 1975, the Maryland Academy of Sciences donated these human remains to the predecessor of the Maryland Center for History and Culture (the Maryland Historical Society) as part of a much larger collection of archeological artifacts. The accession ledger corresponding to these human remains reads, ''Donated to Md. Hist. Soc. In box marked 'Pawnee Bones from Nebraska.' '' The fragmentary human remains are represented by crania, arm and leg bones, and belong to two adults and one juvenile. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Maryland Center for History and Culture

Officials of the Maryland Center for History and Culture have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pawnee Nation of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Vivien Barnett, Curatorial & Collections Assistant, Maryland Center for History and Culture, 610 Park Avenue, Baltimore, MD 21201, telephone (410) 685–3750 Ext. 332, email *vbarnett@mdhistory.org,* by May 23, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Pawnee Nation of Oklahoma may proceed.

The Maryland Center for History and Culture is responsible for notifying the Pawnee Nation of Oklahoma that this notice has been published.

Dated: April 13, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–08602 Filed 4–21–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-33727; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before April 9, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by May 9, 2022.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before April 9, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

ARKANSAS

Cleburne County

Martin Dipping Vat, (Dip That Tick: Texas Tick Fever Eradication in Arkansas MPS), Southeast of the intersection of Tiger B and Gills Rds., Concord vicinity, MP100007717

Drew County

Arkansas A&M College 4th District Faculty House, (New Deal Recovery Efforts in Arkansas MPS), 481 University Dr., Monticello, MP100007719

Bank of Tillar, 168 South Railroad St., Tillar, SG100007720

Mississippi County

Yarbro Overpass, US 61 over Union Pacific Railroad, Yarbro, SG100007721

Pulaski County

Froug, Abraham and Mollie, House, 1727 Center St., Little Rock, SG100007716

St. Francis County

Forrest City City Hall, (New Deal Recovery Efforts in Arkansas MPS), 224 North Rosser St., Forrest City, MP100007718

Washington County

Mount Sequoyah Historic District, 150 NW Skyline Dr., Fayetteville, SG100007722

KANSAS

Atchison County

Central School, (New Deal-Era Resources of Kansas MPS), 215 North 8th St., Atchison, MP100007702

Douglas County

Roberts-Luther-Mitchell House, (Lawrence, Kansas MPS), 1313 Massachusetts St., Lawrence, MP100007703

Elmwood Stock Farm Barn, (Agriculture-Related Resources of Kansas MPS), 571 East 1000 Rd., Baldwin City, MP100007704

Johnson County

Hammer, Louis & Rachel, Barn, (Agriculture-Related Resources of Kansas MPS), 33600 West 143rd St., Gardner, MP100007705

Leavenworth County

Greenwood Cemetery, Tonganoxie Rd. and Limit St., Leavenworth, SG100007706

Shawnee County

Brown, Shannon, House, 321 Lakeside Dr., Topeka, SG100007707

Wabaunsee County

Sump Barn, (Agriculture-Related Resources of Kansas MPS), 26603 K–99 Hwy., Alma, MP100007708

MICHIGAN

Oakland County

Webster, Elmer R., School, 640 West Huron St., Pontiac, SG100007710

OHIO

Summit County

Barberton Downtown Historic District, Roughly bounded by West Lake and West Tuscarawas Aves., 2nd St. NW, 1st St. NW, 3rd St. NW, 6th St. NW, and 8th St. NW, Barberton, SG100007724

TEXAS

Travis County

Chapel for the Children, 2203 West 35th St., Austin, SG100007709

WASHINGTON

San Juan County

Center School, (Rural Public Schools of Washington State MPS), 452 Richardson Rd., Lopez Island, MP100007711

A request for removal has been made for the following resource:

ARKANSAS

Garland County

Mayberry Springs, US 270, Crystal Springs vicinity, OT90001379

Additional documentation has been received for the following resource:

ARIZONA

Pima County

Blenman-Elm Historic District (Additional Documentation), 1248 North Norton Ave., Tucson, AD03000318

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

NEW YORK

Kings County

Brooklyn VA Hospital Historic District, (United States Third Generation Veterans Hospitals, 1946–1958 MPS), 800 Poly Pl., Brooklyn, MP100007725

Authority: Section 60.13 of 36 CFR part 60

Dated: April 12, 2022

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–08620 Filed 4–21–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1255]

Certain Apparatus and Methods of Opening Containers; Notice of a Final Determination Finding Violations of Section 337; Issuance of a General Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade

Commission has determined to affirm an initial determination (''ID'') (Order No. 11) of the then-presiding chief administrative law judge (''CALJ'') granting summary determination that certain defaulting respondents have violated section 337 of the Tariff Act of 1930, as amended, by importing, selling for importation, or selling in the United States after importation certain apparatus and methods of opening containers that infringe claim 12 of U.S. Patent No. 10,519,016 (''the '016 patent''). The Commission has determined that the appropriate remedy is a general exclusion order excluding infringing container opening apparatuses. The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the excluded products imported during the period of Presidential review. This investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On March 18, 2021, the Commission instituted this investigation based on a complaint filed by Draft Top, LLC (''Draft Top'') of Long Beach, New Jersey. 86 FR 14765 (Mar. 18, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (''section 337''), based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain apparatus and methods of opening containers by reason of infringement of claim 12 of the '016 patent. *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation (''NOI'') named nine respondents: KKS Enterprises Co., Ltd. of Hangzhou, China; Kingskong Enterprises Co., Ltd. of Hangzhou, China; Du Zuojun of Shenzhen, Guangdong, China; WN Shipping USA, Inc. of Inwood, New York; Shuje Wei of Pomona, California; Express Cargo Forwarded, Ltd. of Los Angeles, California; Hou Wenzheng of Hebron, Kentucky (collectively, the ''Defaulting Respondents''); Mintiml of Yangzhou, Jiangsu, China; and Tofba International, Inc. (''Tofba'') of Hawthorne, California. Id. The Office of Unfair Import Investigations (''OUII'') is also named as a party. *Id.*

The Commission subsequently terminated respondents Tofba and Mintiml from the investigation based on Draft Top's withdrawal of the complaint as to those respondents. *See* Order No. 6 (May 12, 2021), *unreviewed by* Comm'n Notice (May 27, 2021) (terminating Tofba); Order No. 9 (Aug. 11, 2021), *unreviewed by* Comm'n Notice (Aug. 24, 2021) (terminating Mintiml).

On July 29, 2021, the Commission found the seven Defaulting Respondents in default for failing to respond to the complaint and NOI and failing to show cause why they should not be found in default. Order No. 8 (July 12, 2021), *unreviewed by* Comm'n Notice (July 30, 2021). The Defaulting Respondents are the only respondents remaining in this investigation.

On August 20, 2021, Draft Top filed a motion seeking summary determination that the Defaulting Respondents have violated section 337 and requesting that the Commission issue a general exclusion order and set a 300 percent bond for any importations of infringing goods during the period of Presidential review. On September 17, 2021, Draft Top filed a supplement to its motion concerning certain ''inadvertently omitted'' evidence of its domestic expenditures in 2020. That same day, OUII filed a response supporting Draft Top's motion and requested remedial relief except on the issue of bonding, submitting instead that a bond of 100 percent, not 300 percent, is appropriate. No Defaulting Respondent filed a response to Draft Top's motion.

On December 20, 2021, the former CALJ issued the subject ID granting Draft Top's motion and finding violations of section 337 by the Defaulting Respondents. Specifically, the ID finds that: (i) Draft Top satisfied the importation requirement as to the Defaulting Respondents; (ii) the Commission has subject matter, personal, and in rem jurisdiction in this investigation; (iii) the Defaulting Respondents' accused products practice claim 12 of the '016 patent; (iv) claim 12 of the '016 patent has not been shown invalid; and (v) Draft Top satisfied the technical and economic prongs of the domestic industry requirement as to the '016 patent. The ID also includes the CALJ's recommended determination on remedy and bonding, recommending that the Commission issue a general exclusion order and set a 100 percent bond for any importations of infringing products during the period of Presidential review. No party petitioned for review of the ID.

The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule § 210.50(a)(4) (19 CFR 210.50(a)(4)). The Commission also did not receive any submissions on the public interest from members of the public in response to the Commission's **Federal Register** notice. 87 FR 238–39 (Jan. 4, 2022).

On February 3, 2022, the Commission determined not to review the ID's grant of summary determination of violations of section 337. 87 FR 7499–501. The Commission's notice also requested written submissions on remedy, the public interest, and bonding. *Id.* On February 17, 2022, Draft Top and OUII filed initial written submissions in response to the Commission's notice. On February 24, 2022, Draft Top and OUII filed reply written submissions. No other submissions were received.

Having examined the record in this investigation, including the parties' submissions, the Commission has determined that the appropriate remedy is a general exclusion order prohibiting the unlicensed importation of container opening apparatuses that infringe claim 12 of the '016 patent, pursuant to section 337(d)(2), (19 U.S.C. 1337(d)(2)). The Commission has determined that the public interest factors do not preclude issuance of this remedial order. The Commission has also determined to set a bond in the amount of 100 percent of the entered value of the excluded products imported during the period of Presidential review (19 U.S.C. 1337(j)). The Commission issues its opinion herewith setting forth its determinations on certain issues. The Commission's order and opinion were delivered to the President and United States Trade Representative on the day of their issuance. This investigation is hereby terminated.

While temporary remote operating procedures are in place in response to COVID–19, the Office of the Secretary is not able to serve parties that have not retained counsel or otherwise provided a point of contact for electronic service. Accordingly, pursuant to Commission Rules §§ 201.16(a) and 210.7(a)(1) (19 CFR 201.16(a), 210.7(a)(1)), the Commission orders that the Complainant complete service for any party without a method of electronic service noted on the attached Certificate

of Service and shall file proof of service on the Electronic Document Information System (EDIS).

The Commission vote for this determination took place on April 18, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 18, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–08605 Filed 4–21–22; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's ad hoc Committee on Elections hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: April 26, 2022, from 4:00–4:30 p.m. EDT.

PLACE: This meeting will be held by teleconference through the National Science Foundation.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Committee Chair's opening remarks; discussion of additional information proposed for the Board book associated with the Chair and Vice Chair elections related to Board members who are eligible for reappointment.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Andrea Rambow, *arambow@nsf.gov,* 703–292–7000. You may find meeting updates at *https://www.nsf.gov/nsb/meetings/index.jsp#up.*

Chris Blair,

Executive Assistant to the National Science Board Office.

[FR Doc. 2022–08764 Filed 4–20–22; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral & Economic Sciences; 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 (AC) for Social, Behavioral & Economic Sciences (#1171).

Date and Time: May 20, 2022, 11:00 a.m.–5:00 p.m. (ET).

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Advance Registration is Required: SBE Spring 2022 Advisory Committee Meeting Registration Link.

Type of Meeting: Open.

Contact Person for More Information: John Garneski, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Science; National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–8700.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Social, Behavioral and Economic Sciences (SBES) programs and activities.

Agenda Items

- Welcome, Introductions, Approval of Previous Advisory Committee (AC) Meeting Summary, Preview of Agenda
- Directorate for Social, Behavioral, and Economic Sciences (SBES) Update
- National Center for Science and Engineering Statistics (NCSES) Organizational Realignment and Updates
- New AC Member Presentation
- Meeting with NSF Leadership
- SBE future year planning and visioning
- Committee on Equal Opportunities in Science and Engineering (CEOSE) Update
- Advisory Committee for Environmental Research and Education (AC–ERE) Update

Dated: April 19, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–08659 Filed 4–21–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Program Monitoring Data Collections for National Science Foundation (NSF) Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Programs.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection for post-award output and outcome monitoring system.

Abstract: The NSF SBIR/STTR programs focus on transforming scientific discovery into products and services with commercial potential and/or societal benefit. Unlike fundamental

or basic research activities that focus on scientific and engineering discovery itself, the NSF SBIR/STTR programs support the creation of opportunities to move fundamental science and engineering out of the lab and into the market at scale, through startups and small businesses representing deep technology ventures. Here, deep technologies refer to technologies based on discoveries in fundamental science and engineering. The NSF SBIR/STTR programs are designed to provide non-dilutive funding (financing that does not involve equity, debt, or other elements of the business ownership structure) at the earliest stages of technology research and development.

The NSF SBIR/STTR programs are Congressionally mandated. By investing federal research and development funds into startups and small businesses, NSF hopes to stimulate the creation of novel products, services, and solutions in the private sector, strengthen the role of small business in meeting federal research and development needs, increase the commercial application of federally supported research results, build a strong national economy, and increase and develop the US workforce, especially by fostering and encouraging participation of socially and economically disadvantaged and women-owned small businesses.

Both the NSF SBIR and NSF STTR programs have two phases: Phase I and Phase II. Phase I is a 6–12 month experimental or theoretical investigation that allows the awardees to determine the scientific, technical, and commercial merit of the idea or concept. Phase II further develops the proposed concept, building on the feasibility of the project undertaken in Phase I, with a goal of working toward the commercial launch of the new product, process, or service being developed.

The NSF SBIR/STTR programs request the Office of Management and Budget (OMB) approval of this clearance that will allow the programs to improve the rigor of our surveys for evaluations and program monitoring, as well as to initiate new data collections to monitor the immediate, intermediate, and long-term outcomes of our investments by periodically surveying the startup businesses and their founders/co-founders involved in the businesses. The clearance will allow the SBIR/STTR programs to rigorously develop, test, and implement survey instruments and methodologies.

The primary objective of this clearance is to allow the NSF SBIR/STTR programs to collect characteristics, output, and outcome information from the startup companies funded by the programs. This collection will enable the evaluation of the impacts of our investments in technology translation and innovation over time. The second, related objective is to improve our questionnaires and/or data collection procedures through pilot tests and other survey methods used in these activities. Under this clearance a variety of surveys could be pre-tested, modified, and used.

Following standard OMB requirements, NSF will submit to OMB an individual request for each survey project we undertake under this clearance. NSF will request OMB approval in advance and provide OMB with a copy of the questionnaire and materials describing the project.

Data collected will be used for planning, management, evaluation, and audit purposes. Summaries of output and outcome monitoring data are used to respond to queries from Congress, the Small Business Administration (SBA), the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), NSF's Office of the Inspector General, and other pertinent stakeholders. These data are needed for effective administration, program monitoring, evaluation, outreach/marketing roadmaps, and for strategic reviews and measuring attainment of NSF's program and strategic goals, as identified by the President's Accountable Government Initiative, the Government Performance and Results Act Modernization Act of 2010, Evidence-Based Policymaking Act of 2018, and NSF's Strategic Plan.

All questions asked in the data collection are questions that are NOT included in the annual, final or outcomes reports, and the intention is to ask the grantees even beyond the period of performance on voluntary basis in order to capture impacts of the research that occur during and beyond the life of the award.

Grantees will be invited to submit information on a periodic basis to support the management of the NSF SBIR/STTR investment portfolio. Once the survey tool for a specific program is tested, grantees will be invited to submit these indicators to NSF via data collection methods that include, but are not limited to, online surveys, interviews, focus groups, phone interviews, etc. These indicators are both quantitative and descriptive and may include, for example, the characteristics of project personnel, sources of funding and support, knowledge transfer and technology translation activities, patents, licenses, publications, descriptions of significant advances, and other outcomes of the funded efforts.

Use of the Information: The data collected will be used for NSF internal and external reports, historical data, program level studies and evaluations, and for securing future funding for the maintenance and growth of the NSF SBIR/STTR programs. Evaluation designs could make use of metadata associated with the award and other characteristics to identify a comparison group to evaluate the impact of the program funding and other interesting research questions.

ESTIMATE OF PUBLIC BURDEN

Collection title	Number of respondents	Annual number of responses/ respondent	Annual hour burden
NSF SBIR/STTR Program Monitoring	400 startups per year 1,200 Founders (up to 3 entries per start-up).	1 1	100 200
Total			300

For life-of-award monitoring, the data collection burden to awardees will be limited to no more than 30 minutes of the respondents' time in each instance.

Respondents: The respondents are either Principal Investigators (PIs) of the startup businesses that the NSF SBIR/STTR Programs awarded, founders, co-founders, and/or key personnel of the startup businesses. In the case of Business Survey, only one response

from each startup/small business is anticipated.

Estimates of Annualized Cost to Respondents for the Hour Burdens: The overall annualized cost to the respondents is estimated to be $26,400. The following table shows the annualized estimate of costs to PI/Founders/Business Partners respondents, who are generally university assistant professors. This estimated hourly rate is based on a report from the American Association of University Professors, ''Annual Report on the Economic Status of the Profession, 2020–21,'' *Academe,* March–April 2021, Survey Report Table 1. According to this report, the average salary of an assistant professor across all types of doctoral-granting institutions (public, private-independent, religiously affiliated) was $91,408. When divided by the number of standard annual work hours (2,080), this calculates to approximately $44 per hour.

Respondent type	Total burden hours	Average hourly rate	Estimated annual cost
PIs, Founders, Business Partners	300	$44	$13,200

Estimated Number of Responses per Report: Data collection for the collections involves all awardees in the programs involved.

Dated: April 18, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–08586 Filed 4–21–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register** and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays). Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Program Monitoring Data Collections for the National Science Foundation (NSF) Innovation Corps (I-Corps) Program.

OMB Number: 3145–NEW.

Type of Request: Intent to seek approval to establish an information collection for post-award output and outcome monitoring system.

Abstract: The National Science Foundation (NSF) Innovation Corps (I-Corps) Program was started in 2011 to develop and nurture a national innovation ecosystem built upon fundamental research that guides the output of scientific and engineering discoveries closer to the development of technologies, products, and services that benefit society.

The goal of the I-Corps Program is to use experiential education to help entrepreneurial researchers reduce the time necessary to translate promising ideas from the laboratory bench to widespread implementation. In addition to accelerating technology translation, the NSF I-Corps program also seeks to reduce the risk associated with technology development conducted without insight into industry requirements and challenges.

The NSF I-Corps Program is designed to support the commercialization of ''deep technologies,'' those revolving around fundamental discoveries in science and engineering. The program addresses the skill and knowledge gaps associated with the transformation of basic research into deep technology ventures. The program enables entrepreneurial researchers in deep technologies to receive support in the form of entrepreneurial education, industry mentoring, and funding to accelerate the translation of knowledge derived from fundamental research into emerging products and services that may attract subsequent third-party funding. I-Corps training and infrastructure together represent an important investment for NSF and the Nation, as directed by the American Innovation and Competitiveness Act (AICA), Public Law 114–329, Section 601.

These selected researchers form teams and participate in the I-Corps Teams Program Curriculum. An I-Corps team includes the Entrepreneurial Lead (EL), Technical Lead (TL) or the Principal Investigator (PI), and the Industrial Mentor (IM). During the training program, the team is expected to spend significant time conducting active customer discovery, including interviewing potential customers and potential partners. The outcomes of I-Corps Teams projects will be threefold: (1) A decision on a clear path forward based on an assessment of the business model, (2) substantial first-hand evidence for or against product-market fit, with the identification of customer segments and corresponding value propositions, and (3) a narrative of a compelling technology demonstration for potential partners.

The NSF I-Corps program requests the Office of Management and Budget (OMB) approval of this clearance that will allow the programs to improve the rigor of our surveys for evaluations and

program monitoring, as well as to initiate new data collections to monitor the immediate, intermediate, and long-term outcomes of our investments by periodically surveying the I-Corps teams and their members. The clearance will allow the program to rigorously develop, test, and implement survey instruments and methodologies.

The primary objective of this clearance is to allow the NSF I-Corps program to collect characteristics, inputs, outputs, and outcomes information from the I-Corps teams funded by the program. This collection will enable the evaluation of the impacts on the four themes as outlined in the FY 2021 NSF I-Corps biennial report to Congress:

1. Training an Entrepreneurial Workforce
2. Translating Technologies
3. Nurturing an Innovation Ecosystem
4. Enabling Economic Impact

The second, related objective is to improve our questionnaires and/or data collection procedures through pilot tests and other survey methods used in these activities. Under this clearance a variety of surveys could be pre-tested, modified, and used.

Following standard OMB requirements, NSF will submit to OMB an individual request for each survey project we undertake under this clearance. NSF will request OMB approval in advance and provide OMB with a copy of the questionnaire and materials describing the project.

Data collected will be used for planning, management, evaluation, and audit purposes. Summaries of output and outcome monitoring data are used to respond to queries from Congress, the public, NSF's external merit reviewers who serve as advisors, including Committees of Visitors (COVs), NSF's Office of the Inspector General, and other pertinent stakeholders. These data are needed for effective administration, program monitoring, evaluation, outreach/marketing roadmaps, and for strategic reviews and measuring attainment of NSF's program and strategic goals, as identified by the President's Accountable Government Initiative, the Government Performance and Results Act Modernization Act of 2010, Evidence-Based Policymaking Act of 2018, and NSF's Strategic Plan.

All questions asked in the data collection are questions that are NOT included in the annual, final or outcomes reports, and the intention is to ask the grantees even beyond the period of performance on voluntary basis in order to capture impacts of the research that occur during and beyond the life of the award.

Grantees will be invited to submit information on a periodic basis to support the management of the NSF I-Corps investment portfolio. Once the survey tool is tested, grantees will be invited to submit these indicators to NSF via data collection methods that include, but are not limited to, online surveys, interviews, focus groups, phone interviews, etc. These indicators are both quantitative and descriptive and may include, for example, the characteristics of project personnel, sources of funding and support, knowledge transfer and technology translation activities, patents, licenses, publications, descriptions of significant advances, and other outcomes of the funded efforts.

Use of the Information

The data collected will be used for NSF internal and external reports, historical data, program level studies and evaluations, and for securing future funding for the maintenance and growth of the NSF I-Corps program. Evaluation designs could make use of metadata associated with the award and other characteristics to identify a comparison group to evaluate the impact of the program funding and other relevant research questions.

ESTIMATE OF PUBLIC BURDEN

Collection title	Number of respondents	Annual number of responses/ respondent	Annual hour burden
Program Monitoring Data Collections for the National Science Foundation (NSF) Innovation Corps (I-Corps) Program.	400 I-Corps Teams (1,200 program participants) per year.	3	900
	5 I-Corps Hubs (1,200 program participants) per year.	3	900
Total	2,400 participants	.....	1,800

For life-of-award monitoring, the data collection burden to awardees will be limited to no more than 15 minutes of the respondents' time in each instance.

Respondents

The respondents are consisted of Technical Lead (TL) of the I-Corps Project or Principal Investigator (PI) of NSF I-Corps Program awards, Entrepreneurial Lead (EL), and Industry Mentor (IM).

Estimates of Annualized Cost to Respondents for the Hour Burdens

The overall annualized cost to the respondents is estimated to be $30,000.

The following table shows the annualized estimate of costs to PIs or TLs/ELs/IMs respondents.

The annualized estimate of cost to both the PIs/TLs and IMs, who are generally University Professors, is calculated using the hourly rate based on a report from the American Association of University Professors, ''Annual Report on the Economic Status of the Profession, 2020–21,'' *Academe,* March–April 2021, Survey Report Table 1. According to this report, the average salary of an assistant professor across all types of doctoral-granting institutions (public, private-independent, religiously affiliated) was $91,408. When divided by the number of standard annual work hours (2,080), this calculates to approximately $44 per hour. Similarly, the annualized estimate of costs to the ELs, who are generally graduate students, can be calculated using the data published in the 2017 *Science* magazine article that a typical annual stipend for graduate students in the sciences is around $25,000. When divided by the number of standard annual work hours (2,080), this calculates to approximately $12 per hour.

Respondent type	Number of respondents	Burden hours per respondent	Average hourly rate	Estimated annual cost
PIs	800	0.75	$44	$26,400
ELs/TLs	800	0.75	12	7,200
Industry Mentors	800	0.75	44	26,400
Total	1,200			60,000

Estimated Number of Responses per Report

Data collections involve all awardees in the programs.

Dated: April 18, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–08581 Filed 4–21–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 25, May 2, 9, 16, 23, 30, 2022. All listed meeting times (see **MATTERS TO BE CONSIDERED**) are local to the meeting location. 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: Multiple locations (see **MATTERS TO BE CONSIDERED**). 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 and Closed (see **MATTERS TO BE CONSIDERED**).

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 *Betty.Thweatt@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of April 25, 2022

Tuesday, April 26, 2022

10:00 a.m. Briefing on the Annual Threat Environment (Closed Ex. 1)

Thursday, April 28, 2022

10:00 a.m. Executive Branch Briefing on NRC International Activities (Closed Ex. 1 & 9)

Week of May 2, 2022—Tentative

There are no meetings scheduled for the week of May 2, 2022.

Week of May 9, 2022—Tentative

Tuesday, May 10, 2022

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Public) (Contact: Kellee Jamerson: 301–415–7408)

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 live by webcast at the Web address—*https://video.nrc.gov/.*

Thursday, May 12, 2022

10:00 a.m. Briefing on Advanced Reactors Activities With Federal Partners (Public) (Contact: Caty Nolan: 301–287–1535)

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 live by webcast at the Web address—*https://video.nrc.gov/.*

Week of May 16, 2022—Tentative

There are no meetings scheduled for the week of May 16, 2022.

Week of May 23, 2022—Tentative

There are no meetings scheduled for the week of May 23, 2022.

Week of May 30, 2022—Tentative

Wednesday, June 1, 2022

10:00 a.m. Transformation at the NRC—Sustaining Progress as Modern, Risk-Informed Regulator (Public) (Contact: Caty Nolan: 301–415–1024).

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 live by webcast at the Web address—*https://video.nrc.gov/.*

Friday, June 3, 2022

10:00 a.m. Meeting with Advisory Committee on Reactor Safeguards (Public) (Contact: Larry Burkhart: 301–287–3775)

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 live by webcast at the Web address—*https://video.nrc.gov/.*

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 20, 2022.

For the Nuclear Regulatory Commission.

Monika G. Coflin,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2022–08703 Filed 4–20–22; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0085]

Level 3 Probabilistic Risk Assessment Project Documentation (Volume 3x)

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft report; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft report on the Level 3 Probabilistic Risk Assessment (PRA) project; specifically, ''Volume 3x: Overview of Reactor, At-Power, Level 1, 2, and 3 PRAs for Internal Events and Internal Floods.''

DATES: Submit comments by June 21, 2022. Comments received after this date

will be considered if it is practical to do so, but the Commission 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–2022–0085. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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: Alan Kuritzky, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1552, email: *Alan.Kuritzky@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0085 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0085.
- *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *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 8:00 a.m. and 4:00 p.m. (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–2022–0085 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. Discussion

As directed in SRM–SECY–11–0089, ''Options for Proceeding with Future Level 3 Probabilistic Risk Assessment (PRA) Activities,'' the staff is conducting a full-scope multi-unit site Level 3 PRA (Level 3 PRA project) that addresses all internal and external hazards; all plant operating modes; and all reactor units, spent fuel pools, and dry cask storage. The reference site for this study contains two four-loop Westinghouse PWRs with large dry containments. The objectives of the Level 3 PRA project are to (1) develop a Level 3 PRA, generally based on current state-of-practice methods, tools, and data, that (a) reflects technical advances since the last NRC-sponsored Level 3 PRAs (NUREG–1150), which were completed over 30 years ago, and (b) addresses scope considerations that were not previously considered (*e.g.,* low power and shutdown risk, multi-unit risk, other radiological sources); (2) extract new insights to enhance regulatory decision making and to help focus limited NRC resources on issues most directly related to the agency's mission to protect public health and safety; (3) enhance PRA staff capability and expertise and improve documentation practices to make PRA information more accessible, retrievable, and understandable; and (4) demonstrate technical feasibility and evaluate the realistic cost of developing new Level 3 PRAs.

The work performed under this project is being documented as a multi-volume report. This first batch of Level 3 PRA project reports provides a high-level discussion of the overall project technical approach (Volume 2) and describes the analyses and results for the reactor, at-power, Level 1, 2, and 3 PRAs for internal events and internal floods (Volume 3). Each set of Level 3 PRA project reports covering the Level 1, 2, and 3 PRAs for a specific site radiological source, plant operating state, and hazard group (or groups) is accompanied by an overview report. The overview reports summarize the results and insights from all three PRA levels.

The Level 3 PRA project analyses reflect the reference plant as it was designed and operated as of 2012. To provide results and insights better aligned with the current design and operation of the reference plant, the overview reports also provide a reevaluation of the plant risk based on a set of new plant equipment and PRA model assumptions and compare the results of the reevaluation to the original study results. This reevaluation reflects the current reactor coolant pump shutdown seal design at the reference plant, as well as the potential impact of FLEX strategies, both of which reduce the risk to the public.

The results of the original Level 3 PRA project analyses and the reevaluation both show that, when considering internal events and floods, the combination of this plant design and site location has substantial margin to the quantitative health objectives related to the NRC's safety goal policy. Even though these margins can vary for other plants due to variations in their design and siting, the estimates derived for the reference plant, when adjusted for siting and design variations, would provide useful qualitative risk insights for other U.S. operating plants.

III. Availability of Documents

The documents identified in the following table are available to

interested persons through ADAMS, as indicated.

Document description	ADAMS Accession No.
SRM–SECY–11–0089, ''Options for Proceeding with Future Level 3 Probabilistic Risk Assessment (PRA) Activities''	ML112640419
Level 3 PRA Project, Volume 3x: Overview of Reactor, At-Power, Level 1, 2, and 3 PRAs for Internal Events and Internal Floods; Draft Report for Comment	ML22067A210
Level 3 PRA Project, Volume 3a: Reactor, At-Power, Level 1 PRA for Internal Events, Part 1—Main Report	ML22067A211
Level 3 PRA Project, Volume 3a: Reactor, At-Power, Level 1 PRA for Internal Events, Part 2—Appendices	ML22067A212
Level 3 PRA Project, Volume 3b: Reactor, At-Power, Level 1 PRA for Internal Flooding	ML22067A213
Level 3 PRA Project, Volume 3c: Reactor, At-Power, Level 2 PRA for Internal Events and Floods	ML22067A214
Level 3 PRA Project, Volume 3d: Reactor, At-Power, Level 3 PRA for Internal Events and Floods	ML22067A215
Level 3 PRA Project, Volume 2: Background, Site and Plant Description, and Technical Approach	ML22067A232

Dated: April 19, 2022.

For the Nuclear Regulatory Commission.

John A. Nakoski,

Chief, Probability Risk Assessment Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.

[FR Doc. 2022–08617 Filed 4–21–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act; System of Records

AGENCY: Postal Service®.

ACTION: Notice of a modified system of records; response to comments.

SUMMARY: The United States Postal Service® (USPS®) is responding to public comments regarding revisions to a General Privacy Act Systems of Records (SOR). These revisions were made to support an initiative sponsored by the United States Postal Inspection Service® (USPIS®) to conduct link analysis for investigative purposes. There will be no changes to the system of records or the effective date of January 18, 2022, in light of public comments received.

DATES: The revisions to USPS SOR 700.000, Inspection Service Investigative File System, Document Citation 86 FR 71679, were originally scheduled to be effective on January 18, 2022, without further notice. After review and evaluation of comments received, the Postal Service has found that no substantive changes to the system of records are required, and that the effective date for the implementation of the proposed revisions should proceed as scheduled.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov*.

SUPPLEMENTARY INFORMATION: On December 17, 2021, the Postal Service published notice of its intent to modify an existing system of records, USPS SOR 700.000, Inspection Service Investigative File System, to support the USPIS sponsored initiative to conduct link analysis for investigative purposes.

The United States Postal Inspection Service (USPIS) is focused on continuous improvement in the effort to stay one-step ahead of bad actors and to preserve the sanctity of the mail. To further this objective, USPIS is implementing a process to conduct a link analysis across multiple disparate Postal systems to aggregate data and increase efficiency. This process will automate the analysis process in part, reducing manual effort by Postal Inspectors and Inspection Service analysts.

The Postal Service provides the following responses to the comments received pursuant to its **Federal Register** notice 86 FR 71679, regarding proposed modifications to USPS SOR 700.000, Inspection Service Investigative File System.

1. *Question 1:*[1] The Inspection Service's (USPIS) System of Record adjustments allowing for the to conduct link analysis for I 1nvestigative purposes is outside of USPIS's jurisdiction.

Answer: Leveraging new technology to link data and more effectively process investigative data is well within the authority of the United States Postal Inspection Service (USPIS). Title 18 U.S.C. 3061 specifically grants USPIS the authority to investigate criminal matters related to the Postal Service, its products, services, infrastructure, employees, and the mail. The powers granted in this section are put into effect in the enforcement of laws regarding property in the custody of the Postal Service, property of the Postal Service, the use of the mails and other postal offenses. With respect to such property, Postal Inspectors are empowered to conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Postal Service or persons on the property. Processing data more effectively, falls squarely within USPIS's authority.

2. *Question 2:*[2] The Inspection Service's (USPIS) System of Record adjustments allowing for the to conduct link analysis for investigative purposes will allow USPIS to conduct surveillance on customers.

Answer: Law enforcement agencies have an increased need to manage data in a more secure, efficient, and effective manner, while remaining true to necessary legal and regulatory requirements. The USPIS will utilize a flexible, investigative intelligence platform that uses a data model to drive the discovery of associated data. Such a platform would fuse previously disconnected paradigms such as business intelligence, dashboard, link analysis, content search, and operational monitoring, across USPIS's network. Streamlining investigative and analytical procedures is not surveillance.

3. *Question 3:*[3] The Inspection Service's (USPIS) System of Record adjustments allowing for the to conduct link analysis for investigative purposes increases access and therefore privacy risk.

Answer: Law enforcement agencies have an increased need to manage data in a more secure, efficient, and effective manner, while remaining true to necessary legal and regulatory requirements. Streamlining investigative and analytical procedures does not increase access to data. However, should USPIS decide to increase access to data, such a decision falls within USPIS's clear mandate to investigate criminal matters related to the Postal Service, its products, services, infrastructure, employees, and the mail. Regardless, USPIS implements information security standards in accordance with the USPS Chief Information Security Office and applies increased security controls where necessary. USPIS takes its responsibility to safeguard its investigative data seriously and takes significant measures to protect such data.

Footnotes

[1] In response to implied question contained in comments submitted by The Electronic Privacy Information Center, Section II,

entitled ''The Postal Inspection Service is at serious risk of mission creep when the agency expands information collection and investigations beyond traditional postal crimes.''

[2] In response to implied question contained in comments submitted by The Electronic Privacy Information Center, Section III, entitled ''The Postal Inspection Service is seeking to expand its system of records to include data from USPS customers who have done nothing to warrant law enforcement surveillance.''

[3] In response to implied question contained in comments submitted by The Electronic Privacy Information Center, Section IV, entitled ''Increased access to customer data poses privacy risks for customers of the Postal Service.''

Sarah E. Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–08566 Filed 4–21–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94741; File No. SR–CboeBZX–2022–026]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Eliminate the Minimum Price Variance Provisions of Exchange Rule 14.11(i) (Managed Fund Shares), (l) (Exchange-Traded Fund Shares), and (m) (Tracking Fund Shares)

April 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2022, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposal to eliminate the Minimum Price Variance provisions of Exchange Rule 14.11(i) (Managed Fund Shares), (l) (Exchange-Traded Fund Shares), and (m) (Tracking Fund Shares). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*https://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the Minimum Price Variance provisions of Exchange Rule 14.11(i), (l), and (m), which correspond to the Exchange's listing rules for Managed Fund Shares,[5] Exchange-Traded Fund Shares (''ETF Shares''),[6] and Tracking Fund Shares,[7] respectively.

Currently, Exchange Rules 14.11(i)(2)(B), (l)(2)(B), and (m)(2)(C) provide that the minimum price variation for quoting and entry of orders in Managed Fund Shares, ETF Shares, and Tracking Fund Shares, respectively, is $0.01 (collectively, the ''ETP MPV Rules'') regardless of the price of the security. The Exchange proposes to delete the ETP MPV Rules because they may appear to be inconsistent with Exchange Rule 11.11 and Rule 612 of Regulation National Market System (''NMS'')[8] because the ETP MPV Rules do not specifically include the minimum price variance for securities that are priced less than $1.00. Specifically, Rule 612 of Regulation NMS specifies minimum pricing increments for NMS stocks, which include Managed Fund Shares, ETF Shares, and Tracking Fund Shares.[9] In general, Rule 612 of Regulation NMS prohibits market participants from displaying, ranking, or accepting quotations, orders, or indications of interest in any NMS stock priced in an increment smaller than $0.01 if the quotation, order, or indication of interest is priced equal to or greater than $1.00 per share. If the quotation, order, or indication of interest is priced less than $1.00 per share, the minimum pricing increment is $0.0001. Similarly, Exchange Rule 11.11 provides that bids, offers, orders or indications of interest in securities traded on the Exchange shall not be made in an increment smaller than (1) $0.01 if those bids, offers or indications of interests are priced equal to or greater than $1.00 per share; or (2) $0.0001 if those bids, offers or indications of interests are priced less

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The term ''Managed Fund Share'' means a security that (i) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value. *See* Exchange Rule 14.11(i)(3)(A).

[6] The term ''ETF Shares'' means shares of stock issued by an Exchange-Traded Fund. *See* Exchange Rule 14.11(l)(3)(A). The term ''Exchange-Traded Fund'' has the same meaning as the term ''exchange-traded fund'' as defined in Rule 6c–11 under the Investment Company Act of 1940. *See* Exchange Rule 14.11(l)(3)(B).

[7] The term ''Tracking Fund Share'' means a security that: (i) Represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. *See* Exchange Rule 14.11(m)(3)(A).

[8] 17 CFR 242.612.

[9] An ''NMS stock'' is any NMS security other than an option. *See* 17 CFR 242.600(b)(55). An ''NMS security'' is any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. *See* 17 CFR 242.600(b)(54).

than $1.00 per share and the security is an NMS stock pursuant to Commission Rule 600(b)(46) under the Act and is trading on the Exchange; or (3) any other increment established by the Commission for any security which has been granted an exemption from the minimum price increments requirements of Commission Rule 612(a) or 612(b).[10] Because the intent was not for ETP MPV Rules to supersede Rule 612 of Regulation NMS or Exchange Rule 11.11, the Exchange is proposing to delete these paragraphs to remove any potential confusion as to the minimum price variance requirements for Managed Fund Shares, ETF Shares, and Tracking Fund Shares priced less than $1.00.[11]

Based on the Exchange's proposal to remove the ETP MPV Rules, the Exchange also proposes to re-letter subparagraphs under Rules 14.11(i)(2), (l)(2), and (m)(2) to reflect the removal of those paragraphs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(1) [14] requirements that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange's proposal to delete the ETP MPV Rules is intended to remove any potential confusion as to the minimum price variance for Managed Fund Shares, ETF Shares, and Tracking Fund Shares listed on the Exchange and priced less than $1.00. As discussed above, the ETP MPV Rules were not intended to supersede Rule 612 of Regulation NMS or Exchange Rule 11.11.

The proposal is intended to remove any potential confusion in the Exchange's Rules as it relates to the minimum price variance for Managed Fund Shares, ETF Shares, and Tracking Fund Shares listed on the Exchange and priced less than $1.00, which the Exchange believes will remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that re-lettering current Rules to correspond to the proposed changes will allow the Exchange to maintain a clear and organized rule structure, thus preventing investor confusion. For these reasons, the Exchange believes the proposed rule change is consistent with the requirements of Sections 6(b)(5) and 6(b)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to remove any potential confusion regarding the minimum price variance for Managed Fund Shares, ETF Shares, and Tracking Fund Shares listed on the Exchange and priced less than $1.00.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the 30-day operative delay will add clarity to BZX's rules and remove any potential inconsistency between the ETP MPV Rules and Exchange Rule 11.11 and Rule 612 of Regulation NMS. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[19]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[10] *See* Exchange Rule 11.11.

[11] *See* Securities Exchange Act Release Nos. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 6, To Amend BATS Rule 14.11(i) To Adopt Generic Listing Standards for Managed Fund Shares); 88566 (April 6, 2020), 85 FR 20312 (April 10, 2016) (SR–CboeBZX–2019–097) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt BZX Rule 14.11(l) Governing the Listing and Trading of Exchange-Traded Fund Shares); 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR–CboeBZX–2019–107) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, To Adopt Rule 14.11(m), Tracking Fund Shares, and To List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF) (collectively, with the corresponding notices referred to as the ''Original ETP MPV Rule filings''). None of the Original ETP MPV Rule filings contain any discussion that the ETP MPV Rule was intended to supersede Exchange Rule 11.11 or Rule 612 of Regulation NMS.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(1).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–026 and should be submitted on or before May 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–08569 Filed 4–21–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34560; 812–15213]

Capital Southwest Corporation

April 19, 2022.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 23(a), 23(b) and 63 of the Act, and pursuant sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act, and pursuant section 23(c)(3) of the Act for an exemption from section 23(c) of the Act.

SUMMARY OF THE APPLICATION: Capital Southwest Corporation (''Company'' or ''Applicant''), requests an order (''Order'') to (a) permit it to issue restricted shares of its common stock (''Restricted Stock'') under the terms of its 2021 Employee Restricted Stock Award Plan (the ''2021 Employee Plan'') and its 2021 Non-Employee Director Restricted Stock Award Plan (the ''2021 Non-Employee Director Plan'') as part of the compensation package for Employee Participants (as defined below) and Non-Employee Director Participants (as defined below), respectively and (b) to allow the Company to withhold shares of the Company's common stock or purchase shares of the Company's common stock from the Employee Participants and Non-Employee Director Participants to satisfy tax withholding obligations relating to the vesting of Restricted Stock pursuant to the 2021 Employee Plan and the 2021 Non-Employee Director Plan, respectively.

APPLICANT: Capital Southwest Corporation.

FILING DATES: The application was filed on March 29, 2021 and amended on January 21, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on May 15, 2022, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicant: *bdiehl@capitalsouthwest.com; msarner@capitalsouthwest.com; sarasabour@eversheds-sutherland.com.*

FOR FURTHER INFORMATION CONTACT: Asen Parachkevov, Senior Counsel or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations

1. The Company, a Texas corporation, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[1] The Company's investment objective is to produce attractive risk-adjusted returns by generating current income from its debt investments and capital appreciation from its equity and equity related investments.

2. Shares of the Company's common stock are traded on the NASDAQ Global Select Market under the symbol ''CSWC.'' As of March September 30, 2021, there were 25,680,551 and 23,341,039 shares of the Company's

[20] 17 CFR 200.30–3(a)(12).

[1] Capital Southwest was incorporated in Texas in 1961. On March 30, 1988 Capital Southwest elected to be regulated as a BDC. Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

common stock issued and outstanding, respectively. As of September 30, 2021, the Company had an aggregate of 24 employees.

3. The Company currently has a seven-member board of directors (the ''Board'') of whom one is an ''interested person'' of the Company within the meaning of section 2(a)(19) of the Act and six are not interested persons (the ''Non-interested Directors''). The Company has six directors who are neither officers nor employees of the Company.

4. The Company believes that its successful performance depends on its ability to offer fair compensation packages to its professionals that are competitive with those offered by other investment management businesses. The Company believes the highly specialized nature of its business, the competitiveness of its market and the small size of its employee base relative to its assets and revenue make such retentions even more critical for the Company, and that the ability to offer equity-based compensation to its professionals is vital to the Company's future growth and success.

5. The Commission previously issued a certain exemptive order (the ''Prior Order''), which, among other things, (i) permits the Company to issue restricted shares of its common stock under the terms of the Company's 2021 Employee Plan as part of the compensation packages for certain of its employees and certain employees of its wholly-owned subsidiaries (''Employee Participants''), and (ii) allows the Company to withhold shares of the Company's common stock or purchase shares of the Company's common stock from the Employee Participants to satisfy tax withholding obligations relating to the vesting of Restricted Stock (as defined in the 2021 Employee Plan) pursuant to the 2021 Employee Plan.[2]

6. The Company states that the relief it is seeking under the requested Order is the same type of relief previously provided by the Commission under the Prior Order, but the requested Order will cover both Employee Participants and non-employee directors of the Board (''Non-Employee Director Participants'', and together with Employee Participants, the ''Participants''). The Order would supersede the Prior Order, with the result that the Company will no longer rely on the Prior Order if the Order is granted.

7. The 2021 Employee Plan will authorize the issuance of shares of Restricted Stock by the Company to certain of its employees. The Company states that the Restricted Stock will be subject to restrictions on transferability and other restrictions as required by the compensation committee of the Board, which will be comprised solely of ''non-employee directors'' within the meaning of rule 16b-3 under the Securities Exchange Act of 1934 (the ''Exchange Act''), each of whom also is not an ''interested person'' of the Company within the meaning of section 2(a)(19) of the Act (''Compensation Committee). The Company states that except to the extent restricted under the terms of the 2021 Employee Plan, an Employee Participant who is granted Restricted Stock will have all the rights of any other shareholder, including the right to vote the Restricted Stock and the right to receive dividends. The Company states that during the restriction period (*i.e.,* prior to the lapse of the applicable forfeiture restrictions), the Restricted Stock generally may not be sold, transferred, pledged, hypothecated, margined or otherwise encumbered by the Employee Participant. The Company states that except as the Board otherwise determines, upon termination of a Participant's employment during the applicable restriction period, Restricted Stock for which forfeiture restrictions have not lapsed at the time of such termination shall be forfeited.

8. The 2021 Non-Employee Director Plan will authorize the issuance of shares of Restricted Stock by the Company to Non-Employee Director Participants. The Company states that the Restricted Stock will be subject to restrictions on transferability and other restrictions as required by the Compensation Committee of the Board. The Company states that except to the extent restricted under the terms of the 2021 Non-Employee Director Plan, a Non-Employee Director Participant who is granted Restricted Stock will have all the rights of any other shareholder, including the right to vote the Restricted Stock and the right to receive dividends. The Company states that during the restriction period (*i.e.,* prior to the lapse of the applicable forfeiture restrictions), the Restricted Stock generally may not be sold, transferred, pledged, hypothecated, margined or otherwise encumbered by the Non-Employee Director Participant. The Company states that unless otherwise specified in the award agreement or the Board determines in any individual case, Restricted Stock awards to Non-Employee Director Participants vest at the end of each one-year term of service on the Board.

9. The Company states that the value of Restricted Stock generally will be taxable to the recipient as ordinary income in the years in which the restrictions on the shares lapse and that such value will be the fair market value of the shares on the dates the restrictions lapse. The Company states that each of the 2021 Employee Plan and the 2021 Non-Employee Director Plan authorizes the Company to withhold common stock (in whole or in part) from any award of restricted shares granted at the time the Restricted Stock is taxed in satisfaction of a Participant's tax obligations.

10. The Company states that maximum amount of Restricted Stock that may be issued and outstanding will not at the time of issuance of any Restricted Stock exceed 10% of the Company's outstanding voting securities.[3] In addition, the Company states that no Employee Participant may be granted more than 25% of the shares reserved for issuance under the 2021 Employee Plan and no Non-Employee Director Participant may be granted more than 25% of the shares reserved for issuance under the 2021 Non-Employee Director Plan.

11. The Company states that each issuance of Restricted Stock under the 2021 Employee Plan or the 2021 Non-Employee Director Plan will be approved by the required majority, as defined in section 57(o) of the Act,[4] of the Company's directors on the basis that the issuance is in the best interests of the Company and its shareholders. The Company states that the date on which the required majority approves an issuance of Restricted Stock will be deemed the date on which the subject Restricted Stock is granted.

12. The Company states that the 2021 Employee Plan was approved by the Board as a whole, including the required majority as defined in section 57(o) of the Act, on March 26, 2021 and was approved by the Company's shareholders on July 28, 2021. In

[2] ''Prior Order'' refers to the exemptive order issued by the Commission on July 19, 2021 (see Capital Southwest Corporation, Investment Company Act Release Nos. 34309 (notice) (June 22, 2021) and 34335 (order) (July 19, 2021)).

[3] For purposes of calculating compliance with this limit, Capital Southwest counts as Restricted Stock all shares of its common stock that are issued pursuant to the 2021 Employee Plan and the 2021 Non-Employee Director Plan, less any shares that are forfeited back to Capital Southwest and cancelled as a result of forfeiture restrictions not lapsing.

[4] Section 57(o) of the Act provides that the term ''required majority,'' when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a BDC's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

addition, the Company states that the 2021 Non-Employee Director Plan was approved by the Board as a whole, including the required majority as defined in section 57(o) of the Act, on March 26, 2021. The Company states that if the Commission issues the Order, the 2021 Non-Employee Director Plan will become effective upon receipt of the approval of the Company's shareholders.

Applicant's Legal Analysis

Sections 23(a) and (b), Section 63

1. Under section 63 of the Act, the provisions of section 23(a) of the Act generally prohibiting a registered closed-end investment company from issuing securities for services or for property other than cash or securities are made applicable to BDCs. This provision would prohibit the issuance of Restricted Stock as a part of the 2021 Employee Plan and the 2021 Non-Employee Director Plan.

2. Section 23(b) generally prohibits a registered closed-end management investment company from selling its common stock at a price below its current net asset value (''NAV''). Section 63(2) makes section 23(b) applicable to BDCs unless certain conditions are met. Because Restricted Stock that would be granted under the 2021 Employee Plan and the 2021 Non-Employee Director Plan would not meet the terms of section 63(2), sections 23(b) and 63 prohibit the issuance of the Restricted Stock.

3. Section 6(c) provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. The Company requests an order pursuant to section 6(c) of the Act granting an exemption from the provisions of sections 23(a) and (b) and section 63 of the Act. The Company states that the concerns underlying those sections include: (a) Preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (b) complication of the investment company's structure that makes it difficult to determine the value of the company's shares; and (c) dilution of shareholders' equity in the investment company. The Company states that the 2021 Employee Plan and the 2021 Non-Employee Director Plan do not raise concerns about preferential treatment of the Company's insiders because each of the 2021 Employee Plan and the 2021 Non-Employee Director Plan is a bona fide compensation plan of the type common among corporations generally. In addition, section 61(a)(4)(B) of the Act permits a BDC to issue to its officers, directors and employees, pursuant to an executive compensation plan, warrants, options and rights to purchase the BDC's voting securities, subject to certain requirements. The Company states that while it is not aware of any specific discussion in the legislative history of section 61 of the Act regarding the use of direct grants of stock as incentive compensation, the legislative history recognizes the crucial role that equity-based compensation played in the operation of a private equity fund and its ability to attract and retain employees. The Company believes that the issuance of Restricted Stock is substantially similar, for purposes of investor protection under the Act, to the issuance of warrants, options, and rights as contemplated by section 61 of the Act. The Company also asserts that the 2021 Employee Plan and the 2021 Non-Employee Director Plan would not become a means for Participants to obtain control of the Company because the number of shares of the Company issuable under the 2021 Employee Plan and the 2021 Non-Employee Director Plan would be limited as set forth in the application.

5. The Company further states that the 2021 Employee Plan and the 2021 Non-Employee Director Plan will not unduly complicate the Company's structure because equity-based compensation arrangements are widely used among corporations and commonly known to investors. The Company notes that the 2021 Non-Employee Director Plan will be submitted to its shareholders for their approval. The Company represents that a concise, ''plain English'' description of the 2021 Non-Employee Director Plan, including its potential dilutive effect, will be provided in the proxy materials that will be submitted to the Company's shareholders. The Company also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Exchange Act. The Company further notes that the 2021 Employee Plan and the 2021 Non-Employee Director Plan will be disclosed to investors in accordance with the requirements of the Form N–2 registration statement for closed-end investment companies, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, the Company will comply with the disclosure requirements for executive compensation plans applicable to BDCs.[5] The Company thus concludes that the 2021 Employee Plan and the 2021 Non-Employee Director Plan will be adequately disclosed to investors and appropriately reflected in the market value of the Company's shares.

6. The Company acknowledges that, while awards granted under the 2021 Employee Plan and the 2021 Non-Employee Director Plan may have a dilutive effect on the shareholders' equity in the Company, that effect would be outweighed by the anticipated benefits of the 2021 Employee Plan and the 2021 Non-Employee Director Plan to the Company and its shareholders. The Company asserts that it needs the flexibility to provide the requested equity-based employee compensation in order to be able to compete effectively with other financial services firms for talented professionals. These professionals, the Company suggests, in turn are likely to increase the Company's performance and shareholder value. The Company also asserts that equity-based compensation would more closely align the interests of the Company's employees with those of its shareholders. In addition, the Company states that its shareholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the 2021 Employee Plan and the 2021 Non-Employee Director Plan by the Company's Board.

Section 57(a)(4), Rule 17d–1

7. Section 57(a) proscribes certain transactions between a BDC and persons related to the BDC in the manner described in section 57(b) (''57(b) persons''), absent a Commission order. Section 57(a)(4) generally prohibits a 57(b) person from effecting a transaction in which the BDC is a joint participant absent such an order. Rule 17d–1, made applicable to BDCs by section 57(i), proscribes participation in a ''joint enterprise or other joint arrangement or profit-sharing plan,'' which includes a stock option or purchase plan.

[5] *See* Executive Compensation and Related Party Disclosure, Securities Act Release No. 8655 (Jan. 27, 2006) (proposed rule); Executive Compensation and Related Party Disclosure, Securities Act Release No. 8732A (Aug. 29, 2006) (final rule and proposed rule), as amended by Executive Compensation Disclosure, Securities Act Release No. 8765 (Dec. 22, 2006) (adopted as interim final rules with request for comments).

Employees and directors of a BDC are 57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d–1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (i) whether the participation of the company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

8. The Company requests an order pursuant to section 57(a)(4) and 57(i) of the Act and rule 17d–1 to permit the Company to issue Restricted Stock under the 2021 Employee Plan and the 2021 Non-Employee Director Plan. The Company states that the 2021 Employee Plan and the 2021 Non-Employee Director Plan, although benefiting the Participants and the Company in different ways, is in the interests of the Company's shareholders because the 2021 Employee Plan and the 2021 Non-Employee Director Plan will help align the interests of the Company's employees and directors with those of its shareholders, which will encourage conduct on the part of those employees, officers and directors designed to produce a better return for the Company's shareholders. Additionally, section 57(j)(1) of the Act expressly permits any director, officer or employee of a BDC to acquire warrants, options and rights to purchase voting securities of such BDC, and the securities issued upon the exercise or conversion thereof, pursuant to an executive compensation plan which meets the requirements of section 61(a)(4)(B) of the Act. Applicant submits that the issuance of Restricted Stock pursuant to the 2021 Employee Plan and the 2021 Non-Employee Director Plan poses no greater risk to stockholders than the issuances permitted by section 57(j)(1) of the Act.

Section 23(c)

9. Section 23(c) of the Act, which is made applicable to BDCs by section 63 of the Act, generally prohibits a BDC from purchasing any securities of which it is the issuer except in the open market pursuant to tenders, or under other circumstances as the Commission may permit to ensure that the purchases are made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant states that to the extent that the transactions between Applicant and the respective Participants described in the application with respect to the 2021 Employee Plan and the 2021 Non-Employee Director Plan constitute ''purchases'' by Applicant of its own securities, Section 23(c), absent relief, would prohibit such transactions.

10. Section 23(c)(3) of the Act permits a BDC to purchase securities of which it is the issuer in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant believes that the requested relief meets the standards of section 23(c)(3).

11. Applicant submits that these purchases will be made in a manner that does not unfairly discriminate against Applicant's stockholders because all purchases of Applicant's stock will be at the closing price of the common stock on the Nasdaq Global Select Market (or any primary exchange on which its shares of common stock may be traded in the future) on the relevant date (*i.e.,* the public market price on the date of grant of Restricted Stock). Applicant submits that because all transactions with respect to the 2021 Employee Plan and the 2021 Non-Employee Director Plan will take place at the public market price for the Applicant's common stock, these transactions will not be significantly different than could be achieved by any stockholder selling in a market transaction. Applicant represents that no transactions will be conducted pursuant to the requested order on days where there are no reported market transactions involving Applicant's shares.

12. Applicant represents that the withholding provisions in the 2021 Employee Plan and the 2021 Non-Employee Director Plan do not raise concerns about preferential treatment of Applicant's insiders because each of the 2021 Employee Plan and the 2021 Non-Employee Director Plan is a bona fide compensation plan of the type that is common among corporations generally. Furthermore, the vesting schedule is determined at the time of the initial grant of the Restricted Stock. Applicant represents that all purchases may be made only as permitted by the 2021 Employee Plan, which was approved by both the Board prior to any application and by shareholders on July 28, 2021, and the 2021 Non-Employee Director Plan, which will be approved by the Applicant's stockholders prior to any application of the relief. Applicant believes that granting the requested relief would be consistent with the policies underlying the provisions of the Act permitting the use of equity compensation as well as prior exemptive relief granted by the Commission under section 23(c) of the Act.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The 2021 Non-Employee Director Plan will be authorized by the Company's shareholders.[6]

2. Each issuance of Restricted Stock to Employee Participants and Non-Employee Director Participants will be approved by the required majority, as defined in section 57(o) of the Act, of the Company's directors on the basis that such grant is in the best interests of the Company and its shareholders.

3. The amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options, and rights, together with any Restricted Stock issued and outstanding pursuant to the 2021 Employee Plan, the 2021 Non-Employee Director Plan and any other compensation plans of the Company, at the time of issuance shall not exceed 25% of the outstanding voting securities of the Company, except that if the amount of voting securities that would result from the exercise of all of the Company's outstanding warrants, options, and rights issued to the Company's directors, officers, and employees, together with any Restricted Stock issued pursuant to the 2021 Employee Plan, the 2021 Non-Employee Director Plan and any other compensation plans of the Company, would exceed 15% of the outstanding voting securities of the Company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the 2021 Employee Plan, the 2021 Non-Employee Director Plan and any other compensation plans of the Company, at the time of issuance shall not exceed 20% of the outstanding voting securities of the Company.

4. The amount of Restricted Stock issued and outstanding will not at the time of issuance of any Restricted Stock exceed 10% of the Company's outstanding voting securities.

5. The Board will review the 2021 Employee Plan and the 2021 Non-Employee Director Plan at least annually. In addition, the Board will review periodically the potential impact that the issuance of Restricted Stock under the 2021 Employee Plan and the

[6] The 2021 Employee Plan was approved by Capital Southwest's shareholders on July 28, 2021.

2021 Non-Employee Director Plan could have on the Company's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the 2021 Employee Plan and the 2021 Non-Employee Director Plan, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the issuance of Restricted Stock under the 2021 Employee Plan and the 2021 Non-Employee Director Plan will be in the best interests of the Company's shareholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the 2021 Employee Plan and the 2021 Non-Employee Director Plan. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08662 Filed 4–21–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94735; File No. SR–PEARL–2022–14]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2600, Hours of Trading and Trading Days, and Exchange Rule 2615, Opening Process for Equity Securities

April 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposed rule change to amend Exchange Rule 2600, Hours of Trading and Trading Days, and Exchange Rule 2615, Opening Process for Equity Securities.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange allows for the trading of equity securities on its equity trading platform (referred to herein as ''MIAX Pearl Equities''). The purpose of the proposed rule change is to: (i) Accept prior to 9:30 a.m. Eastern Time orders in equity securities that include a Post Only [3] instruction and a time-in-force of Regular Hours Only (''RHO''),[4] and orders that include a Minimum Execution Quantity [5] instruction and a time-in-force of RHO; and (ii) accept and retain such orders when trading in a security is halted. This is similar to functionality on other equity exchanges.[6] Another purpose of the proposed rule change is to amend Exchange Rule 2615(a)(1) to provide additional specificity concerning the handling of Limit Orders [7] with a Reserve Quantity [8] during the Exchange's opening process. This change is based on the rules of other equity exchanges.[9]

Acceptance of Orders Before 9:30 a.m. Eastern Time

Exchange Rule 2600(a) provides for the entry of orders starting at 7:30 a.m. Eastern Time and that orders entered between 7:30 a.m. and 9:30 a.m. Eastern Time are not eligible for execution until the start of Regular Trading Hours.[10] Exchange Rule 2600(a) further provides that the Exchange will not accept the following orders prior to 9:30 a.m. Eastern Time: Orders designated as Post Only with a time-in-force of RHO, Intermarket Sweep Orders (''ISO''),[11] all orders with a time-in-force of

[3] In sum, an order with a Post Only instruction is a non-routable order that will be ranked and executed on the MIAX Pearl Equities Book pursuant to Exchange Rules 2616 and 2617(a)(4). *See* Exchange Rule 2614(c)(2) for a more detailed description of the Post Only instruction. Exchange Rule 1901 defines the term ''MIAX Pearl Equities Book'' as ''the electronic book of orders in equity securities maintained by the System.''

[4] In sum, an order with a time-in-force of RHO is designated for execution only during Regular Trading Hours, which includes the opening process for equity securities. *See* Exchange Rule 2614(b)(2) for a more detailed description of the RHO instruction.

[5] In sum, Minimum Execution Quantity is an instruction a User may attach to a non-displayed order requiring the System to execute the order only to the extent that a minimum quantity can be satisfied. *See* Exchange Rule 2614(c)(7) for a more detailed description of the Minimum Execution Quantity instruction.

[6] *See, e.g.,* Cboe BYX Exchange, Inc. (''BYX'') Rules 11.1(a) and 11.23(a)(1), Cboe BZX Exchange, Inc. (''BZX'') Rules 11.1(a) and 11.24(a)(1), Cboe EDGA Exchange, Inc. (''EDGA'') and Cboe EDGX Exchange, Inc. (''EDGX'', collectively with BYX, BZX, and EDGA, the ''Cboe Equity Exchanges'') Rules 11.1(a)(1) and 11.7(a)(1) (allowing for the entry of Post Only and Minimum Execution Quantity order with a time-in-force of Day to be entered prior to 9:30 a.m. Eastern Time and not participate in their respective opening processes). *See also e.g.,* Investors Exchange LLC (''IEX'') Rules 11.190(b)(11)(B), 11.190(c)(3), and 11.190(b)(11)(F) (allowing for the entry of Minimum Quantity Orders with a time-in-force of Day prior to 9:30 a.m. Eastern Time and allowing those orders to bypass their opening process) and New York Stock Exchange LLC (''NYSE'') Rule 7.18(b)(1), NYSE Arca LLC (''NYSE Arca'') Rule 7.18–E(b)(1), NYSE American LLC (''NYSE American'') 7.18E(b)(1), NYSE National LLC (''NYSE National'') Rule 7.18(b)(1), and NYSE Chicago LLC (''NYSE Chicago'', collectively with NYSE, NYSE Arca, NYSE American, NYSE National, and NYSE Chicago, the ''NYSE Equity Exchanges'') Rule 7.18(b)(1) (not including ALO orders in the list of order types the exchanges would cancel during a halt).

[7] In sum, a Limit Order is an order to buy or sell a stated amount of a security at a specified price or better. *See* Exchange Rule 2614(a) for a more detailed description of Limit Orders.

[8] In sum, Reserve Quantity is an instruction a User may attach to an order where a portion of the order is displayed (''Displayed Quantity'') and with a portion of the order non-displayed (''Reserve Quantity''). *See* Exchange Rule 2614(c)(8) for a more detailed description of the Reserve Quantity instruction.

[9] *See* BZX Rule 11.24(a)(2), BYX Rule 11.23(a)(2), and EDGA and EDGX Rules 11.7(a)(2).

[10] *See* Exchange Rule 1901 defines the term ''Regular Trading Hours'' as ''the time between 9:30 a.m. and 4:00 p.m. Eastern Time.''

[11] ISOs are defined under Rule 600(b)(38) of Regulation NMS. 17 CFR 242.600(b)(38). *See* Exchange Rule 2614(d) for a more detailed description of ISOs on MIAX Pearl Equities.

Immediate-or-Cancel (''IOC''),[12] and orders that include a Minimum Execution Quantity instruction.

The Exchange currently offers two time-in-force instructions, IOC and RHO. The Exchange understands that some Members now wish to enter orders with a time-in-force of RHO that include either a Post Only instruction or Minimum Execution Quantity instruction prior to 9:30 a.m. Eastern Time. The Exchange, therefore, proposes to amend Exchange Rule 2600(a) to accept prior to 9:30 a.m. Eastern Time orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction. The Exchange notes that this proposal is limited to Limit Orders and Midpoint Peg Orders [13] with a time-in-force of RHO that include either a Post Only or Minimum Execution Quantity instruction. Market Orders [14] and orders that include a time-in-force of IOC and Minimum Execution Quantity instruction will continue to be rejected prior to 9:30 a.m. Eastern Time.[15]

Pursuant to its opening process described under Exchange Rule 2615, the Exchange opens trading at the start of Regular Trading Hours by matching buy and sell orders at the midpoint of the national best bid and offer (''NBBO'').[16] Only orders that include a time-in-force of RHO may participate in the opening process. Exchange Rule 2615(a)(1) provides that orders designated as Post Only, ISOs, orders with a Minimum Execution Quantity instruction, and orders that include a time-in-force other than RHO are not eligible to participate in the Opening Process. As such, orders that include a time-in-force of RHO that include either a Post Only instruction or Minimum Execution Quantity instruction entered prior to 9:30 a.m. Eastern Time would continue to not be eligible for execution until after the Exchange's opening process is complete and continuous trading has begun. The operation of the Post Only and Minimum Execution Quantity instructions are incompatible with the operation of the opening process as each order instruction places a contingency on the order that may prevent an execution. This also reflects current functionality and the Exchange understands this is consistent with how Equity Members [17] who would submit such orders prior to 9:30 a.m. Eastern Time would want their orders to be handled and with their expectations of the types of orders and order instructions that are eligible to participate in an opening process. Exchange Rule 2615(a)(1) would be amended to specify that while orders with a time-in-force of RHO that include a Post Only or Minimum Execution Quantity instruction are accepted prior to the opening process pursuant to Exchange Rule 2600(a) (as amended herein), such orders would not be eligible to participate in the opening process.[18] As they are today, such orders, along with the unexecuted portion of orders that were eligible to participate in the opening process, will be placed on the MIAX Pearl Equities Book in time sequence, beginning with the order with the oldest timestamp, cancelled, executed, or routed to away Trading Centers in accordance with the terms of the order at the conclusion of the opening process.[19]

Acceptance and Retention of Orders During a Halt

Exchange Rule 2615(e)(1) provides that the re-opening process will occur in the same manner as the opening process, with the following differences: ISOs, orders that include a time-in-force of IOC, orders that include a Minimum Execution Quantity instruction, and orders designated as Post Only will be cancelled or rejected, as applicable.[20] As such, during a halt the Exchange cancels or rejects orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction. Equity Members may then choose to resubmit such orders at the conclusion of the Exchange's re-opening process when continuous trading resumes. The Exchange understands that some Equity Members prefer the Exchange accept or retain orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction when the security is halted so that such order would be placed on the MIAX Pearl Equities Book when the re-opening process concludes and they would not need to resubmit the order at that time. The Exchange, therefore, proposes to amend Exchange Rule 2615(e)(1)(A) to no longer cancel or reject orders that include a time-in-force of RHO and either a Minimum Execution Quantity instruction or Post Only instruction when trading in a security is halted. As is the case with the above proposal regarding the opening process, this portion of the proposal is also limited to Limit Orders and Midpoint Peg Orders with a time-in-force of RHO that include either a Post Only or Minimum Execution Quantity instruction.[21]

Pursuant to its re-opening process described under Exchange Rule 2615(e), the Exchange re-opens trading following a halt by matching buy and sell orders at the midpoint of the NBBO. Exchange Rule 2615(e)(1) provides that the re-opening process will occur in the same manner as the opening process, with certain differences described above. As such, only orders that include a time-in-force of RHO may participate in the re-opening process. As with the opening process, orders that include either a Post Only instruction or Minimum Execution Quantity instruction are not eligible to participate in the Exchange's re-opening process because such orders are currently cancelled or rejected during a halt. The Exchange proposes to amend Exchange Rule 2615(e)(1)(A) to specify that orders with a time-in-force of RHO that include a Post Only instruction or a Minimum Execution Quantity instruction would be accepted and

[12] In sum, an order with a time-in-force of IOC is to be executed in whole or in part as soon as such order is received. *See* Exchange Rule 2614(b)(1) for a more detailed description of the time-in-force instruction of IOC.

[13] In sum, a Midpoint Peg Order is a non-displayed Limit Order that is assigned a working price pegged to the midpoint of the Protected Best Bid and Offer (''PBBO''). *See* Exchange Rule 2614(a)(3) for a more detailed description of Midpoint Peg Orders. Exchange Rule 1901 defines PBBO with respect to trading of equity securities as the national best bid or offer that is a Protected Quotation.

[14] Market Orders may include a time-in-force of IOC. *See* Exchange Rule 2614(a)(2)(B). Market Orders with a time-in-force of IOC are rejected prior to the opening process and cancelled or rejected during a halt. *See* Exchange Rules 2600(a) and 2615(e)(1)(A). A Market Order may include a time-in-force of RHO when coupled with the Route to Primary Auction (''PAC'') routing option and such orders are accepted prior to the opening process and during a halt. In sum, PAC is a routing option for Market Orders and displayed Limit Orders designated as RHO that the entering firm wishes to designate for participation in the opening, re-opening (following a regulatory halt, suspension, or pause), or closing process of a primary listing market. *See* Exchange Rule 2617(b)(5)(B) for a more detailed description of the PAC routing option.

[15] The Exchange notes that orders that include a Post Only instruction and time-in-force of IOC are always rejected regardless of time of entry as these two order instructions are incompatible by their terms. *See* preamble to Exchange Rule 2614 (providing that ''[o]rder, instruction, and parameter combinations which are disallowed by the Exchange or incompatible by their terms, will be rejected . . .'').

[16] *See* Exchange Rule 1901.

[17] The term ''Equity Member'' means a Member authorized by the Exchange to transact business on MIAX Pearl Equities. *See* Exchange Rule 1901.

[18] The Exchange proposes to make non-substantive conforming changes to Exchange Rule 2615(a)(1) regarding what orders are not eligible to participate in the opening process to account for the proposed new text.

[19] *See* Exchange Rule 2615(b).

[20] An order that is cancelled is first accepted by the System and then immediately cancelled back to the Member. An order that is rejected is not accepted by the System and immediately returned to the Member.

[21] *See supra* notes 14 and 15 as [sic] accompanying text.

retained during a halt but will continue to not be eligible to participate in the Exchange's re-opening process. The operation of the Post Only and Minimum Execution Quantity instructions are incompatible with the operation of the re-opening process as each order instruction places a contingency on the order that may prevent an execution. Further, such orders not being eligible to participate in the Exchange's re-opening process reflects current functionality and the Exchange understands this is consistent with how Equity Members would want their orders to be handled and with their expectations of the types of orders and order instructions that are eligible to participate in a re-opening process. As they are today, such orders, along with the unexecuted portion of orders that were eligible to participate in the re-opening process, will be placed on the MIAX Pearl Equities Book in time sequence, beginning with the order with the oldest timestamp, cancelled, executed, or routed to away Trading Centers in accordance with the terms of the order at the conclusion of the re-opening process.

Reserve Quantity Clarification

The Exchange currently offers the Reserve Quantity instruction, which enables a User [22] to specify that a portion of their Limit Order be displayed and another portion of their order be non-displayed. The Reserve Quantity instruction may only be attached to a Limit Order.[23] Today, Limit Orders that include a time-in-force of RHO and a Reserve Quantity are eligible to participate in the Exchange's opening or re-opening process.[24] The Exchange proposes to amend Exchange Rule 2615(a)(1) to specify that Limit Orders with a Reserve Quantity instruction may participate to the full extent of their Displayed Quantity and Reserve Quantity. This added language would allow the rule to reflect current functionality, provide market participants with additional specificity regarding the handling of Limit Orders with a Reserve Quantity during the opening and re-opening processes, and is substantially similar to the rules of other exchanges.[25]

Implementation

Due to the technological changes associated with this proposed change, the Exchange will issue a trading alert publicly announcing the implementation date of this proposed rule change to provide Equity Members with adequate time to prepare for the associated technological changes. The Exchange anticipates that the implementation date will be in the second quarter of 2022.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Section 6(b)(5),[27] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change would remove impediments to a free and open market and promote just and equitable principles of trade because it would provide market participants with another venue to which to send orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction prior to 9:30 a.m. Eastern Time. Because the Exchange does not have this functionality, the Exchange believes that market participants have refrained from sending orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction prior to 9:30 a.m. Eastern Time. In this regard, the Exchange notes that the proposed new functionality may improve the Exchange's market by attracting more order flow. The Exchange also believes that its proposal to accept new orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction and to retain such orders during a halt would also improve the Exchange's market by attracting more order flow. Such new order flow will further enhance the depth and liquidity on the Exchange, which supports just and equitable principles of trade and benefits all market participants.

Orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction entered prior to 9:30 a.m. Eastern Time or during a halt would not receive any priority advantage vis-à-vis the unexecuted portion of orders that are eligible for execution in the Exchange's opening or re-opening process. All orders, including orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction, and the unexecuted portion of orders that were eligible to participate in the opening or re-opening process will be placed on the MIAX Pearl Equities Book in time sequence based on their timestamp at the conclusion of the opening or re-opening process.[28] For example, assume a Limit Order to sell 100 shares with a Post Only instruction and time-in-force of RHO is entered at 8:45 a.m. Eastern Time (''Order 1''), then a Limit Order to sell 100 shares with a time-in-force of RHO is entered at 9:00 a.m. Eastern Time (''Order 2''), and then a Limit Order to sell 100 shares with a Minimum Execution Quantity instruction and time-in-force of RHO is entered at 9:15 a.m. Eastern Time (''Order 3''). 50 shares of Order 2 are executed during the Exchange's opening process. These orders would be fed onto the MIAX Pearl Equities Book in the following order: Order 1 for 100 shares, Order 2 for 50 shares, and Order 3 for 100 shares. Assume Order 1 increased its size to 200 shares via a Cancel/Replace message at 9:20 a.m. causing its timestamp to be updated to time of the modification. In this case, these orders would be fed onto the MIAX Pearl Equities Book in the following order: Order 2 for 50 shares, Order 3 for 100 shares, then Order 1 for 200 shares. Therefore, the proposal promotes just and equitable principles of trade because orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction entered prior to 9:30 a.m. Eastern Time would not receive any priority advantage vis-à-vis other orders when being fed onto the MIAX Pearl Equities Book following the conclusion of the Exchange's opening or re-opening process.

The Exchange believes its proposal to allow for the entry of orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction prior to 9:30 a.m. Eastern Time promotes just and equitable principles of trade because it is similar to functionality at other exchanges that allow for orders to be entered prior to 9:30 a.m. Eastern Time with a time-in-force instruction that

[22] Exchange Rule 1901 defines the term ''User'' as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Exchange Rule 2602.''

[23] Exchange Rule 2614(a)(1)(A)(i).

[24] *See* Exchange Rule 2615(a)(1) (providing that orders that include a time-in-force of RHO may participate in the opening process and not specifying that orders with a Reserve Quantity are not eligible to participate in the opening process).

[25] *See supra* note 9.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] The order's timestamp is the time of order entry unless the order is canceled or replaced pursuant to Exchange Rule 2614(e) and its timestamp is updated pursuant to Exchange Rule 2616(a)(5).

allows the order to bypass that exchange's opening process. The Cboe Equity Exchanges allow for the entry of Post Only and Minimum Execution Quantity orders with a time-in-force of Day prior to 9:30 a.m. Eastern Time and allow those orders to bypass their respective opening processes.[29] For example, on EDGX, orders that include a time-in-force of Day that also include a Post Only instruction or a Minimum Execution Quantity instruction are accepted prior to 9:30 a.m. Eastern Time. EDGX Rule 11.7(a) further provides that only orders with a time-in-force of RHO may participate in their opening. As a result, orders that include a time-in-force of Day that also include a Post Only instruction or a Minimum Execution Quantity instruction bypass EDGX's opening processes. The Exchange notes that, unlike on the Exchange, orders that include a time-in-force of Day that also include a Post Only instruction or a Minimum Execution Quantity are eligible for execution prior to 9:30 a.m. Eastern Time on EDGX because EDGX provides pre-market trading and the Exchange does not. In addition, the Exchange would process such orders in time priority following the opening process, which is the same manner in which EDGX would process orders that include a time-in-force of Day and a Post Only instruction or a Minimum Execution Quantity that were not fully executed during EDGX's pre-market trading session following their opening process.

IEX similarly allows for the entry of Minimum Quantity Orders with a time-in-force of Day [30] prior to 9:30 a.m. Eastern Time and allows those orders to bypass their opening process. IEX's Minimum Quantity Order, which is substantially similar to the Exchange's Minimum Execution Quantity instruction, may be entered but not eligible for execution prior to 9:30 a.m. Eastern Time and bypass IEX's opening process.[31] This is similar to the Exchange's proposal to accept orders that include a time-in-force of RHO and a Minimum Execution Quantity instruction prior to 9:30 a.m. Eastern Time and for those orders to not be eligible for execution prior to 9:30 a.m. Eastern Time and bypass the opening process.

The Exchange also believes its proposal to allow for the retention of orders that include a time-in-force of RHO and a Post Only instruction during a halt promotes just and equitable principles of trade because it is similar to functionality at other exchanges. The NYSE Equity Exchanges do not cancel ALO Orders,[32] which are similar to the Exchange's Post Only instruction, during a halt.[33] For example, NYSE Rule 7.18(b) lists the order types that NYSE cancels or rejects when trading in a non-NYSE listed security is halted. NYSE Rule 7.18(b) does not include ALO orders in the list of order types that NYSE will cancel during a halt. Therefore, the Exchange believes NYSE retains ALO orders when trading in a non-NYSE listed security is halted.

The Exchange believes that, unlike as proposed by the Exchange, the NYSE Equity Exchanges do not accept ALO orders when trading in a non-NYSE listed security is halted. The Exchange also believes that the NYSE Equity Exchanges do not accept new orders with a Minimum Trade Size (''MTS'') modifier [34] and cancel existing ones during a halt. Notwithstanding these differences, the Exchange believes the Exchange's proposal to accept and retain orders with a Post Only instruction or Minimum Execution Quantity instruction during a halt would promote just and equitable principles of trade by providing such orders with increased execution opportunities once the re-opening process concludes. The Exchange also believes that its proposal promotes efficiency because the Exchange would accept or retain orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction when not engaged in continuous trading and an Equity Member would not need to resubmit such orders when continuous trading commences following a halt. The Exchange also believes that its proposal to accept new orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction and to retain such orders during a halt would also improve the Exchange's market by attracting more order flow. Such new order flow will further enhance the depth and liquidity on the Exchange, which supports just and equitable principles of trade and benefits all market participants.

The Exchange believes its proposal to amend Exchange Rule 2615(a)(1) to specify that Limit Orders with a Reserve Quantity may participate in the opening and re-opening processes to the full extent of their Displayed Quantity and Reserve Quantity promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because this added language provides market participants with additional specificity within the rule regarding the handling of Limit Orders with a Reserve Quantity during the opening and re-opening processes, thereby avoiding any potential investor confusion. Further, this proposed change does not raise any new or novel issues because it is based on the rules of other exchanges.[35]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposal will not impose any burden on inter-market competition, but rather promote competition by enhancing the Exchange's functionality and expanding the times when certain orders may be submitted. The proposed rule change would improve inter-market competition because it will enable the Exchange to offer functionality substantially similar to that offered by the Cboe Equity Exchanges, NYSE Equity Exchanges, and IEX.[36] The Exchange believes its lack of this functionality has put it at a competitive

[29] *See supra* note 6. EDGX Rule 11.6(q)(2) provide that the Day time-in-force is an ''instruction the User may attach to an order stating that an order to buy or sell which, if not executed, expires at the end of Regular Trading Hours.'' Orders with a time-in-force of Day on EDGX or RHO on the Exchange both expire at the end of Regular Trading Hours and are not meaningfully different other than the fact that on EDGX, orders with a time-in-force of Day are eligible for execution during EDGX's pre-market trading sessions. The Exchange does not currently offer pre-market trading. EDGX Rule 11.1(a)(1) provides that EDGX will not accept orders with a Post Only instruction, orders with a Minimum Execution Quantity instruction that also include a time-in-force of Regular Hours Only, and all orders with a TIF instruction of IOC or FOK prior to either 4:00 a.m. Eastern Time or 7:00 a.m. Eastern Time, as applicable. The Exchange understands that orders with a Post Only instruction and orders with a Minimum Execution Quantity instruction that also include a time-in-force of Regular Hours Only are accepted after either 4:00 a.m. Eastern Time or 7:00 a.m. Eastern Time, as applicable, and bypass EDGX's opening process. *See* EDGX Rule 11.7(a). The Exchange notes that its Post Only instruction and Minimum Execution Quantity instruction are substantially similar to EDGX's Post Only instruction and Minimum Execution Quantity instruction.

[30] *See* IEX Rule 11.190(b)(11)(B).

[31] *See* IEX Rules 11.190(c)(3) and 11.190(b)(11)(F).

[32] *See e.g.,* NYSE Rule 7.31(e)(2) for a description of the NYSE Equity Exchange's ALO Order.

[33] *See supra* note 6.

[34] *See e.g.,* NYSE Rule 7.31(i)(3) for a description of the NYSE Equity Exchange's MTS modifier including that an MTS modifier may be included on a Non-Displayed Limit Order. NYSE Rule 7.18(b)(1) states that NYSE will cancel any unexecuted portion of a Non-Displayed Limit Order in a UTP security during a halt.

[35] *See supra* note 9.

[36] *See supra* note 6.

disadvantage as market participants that seek to enter orders with a Post Only or Minimum Execution Quantity instruction prior to 9:30 a.m. Eastern Time or during a halt have avoided sending orders to the Exchange. The Exchange believes that its proposal promotes competition because it is designed to attract liquidity to the Exchange and improve the overall quality of the MIAX Pearl Equities Book.

The Exchange believes that the proposal will not impose any burden on intra-market competition because it would be available to all Equity Members. Any Equity Member that seeks to enter orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction prior to 9:30 a.m. Eastern Time or during a halt would be free to do so on the Exchange. All orders that include a time-in-force of RHO and either a Post Only instruction or Minimum Execution Quantity instruction entered prior to 9:30 a.m. Eastern Time or during a halt would be treated equally and no order would receive any priority advantage vis-à-vis other orders when being fed onto the MIAX Pearl Equities Book following the conclusion of the Exchange's opening or re-opening process.

Finally, the proposed clarification to Exchange Rule 2615(a)(1) would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it better aligns the rule with System functionality by providing additional specificity and avoiding potential investor confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [37] and Rule 19b–4(f)(6) [38] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2022–14 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–PEARL–2022–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–14, and should be submitted on or before May 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–08568 Filed 4–21–22; 8:45 am]

BILLING CODE 8011–01–P

[37] 15 U.S.C. 78s(b)(3)(A).

[38] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Small Business Capital Formation Advisory Committee will hold a public meeting on Friday, May 6, 2022, via videoconference.

PLACE: The meeting will be conducted by remote means (videoconference) and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov.*

STATUS: The meeting will begin at 10:00 a.m. (ET) and will be open to the public. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

MATTERS TO BE CONSIDERED: The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging businesses and their investors under the federal securities laws.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: April 20, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–08767 Filed 4–20–22; 4:15 pm]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2021–0041]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Department of Labor (DOL).

DATES: Submit comments on the proposed matching program on or before May 23, 2022. The matching program will be applicable on May 25, 2022, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2021–0041 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2021–0041 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–0869.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Melissa Feldhan, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 965–1416, or send an email to *Melissa.Feldhan@ssa.gov.*

SUPPLEMENTARY INFORMATION: Under this matching program, DOL will disclose the DOL-administered Part C Black Lung (BL) benefit data to SSA. SSA will match DOL's Part C BL data with SSA's records of persons receiving Social Security disability benefits to verify that Part C BL beneficiaries are receiving the correct amount of Social Security disability benefits.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and DOL.

Authority for Conducting the Matching Program: The legal authority for this agreement is section 224(h)(1) of the Social Security Act (Act), 42 U.S.C. 424a(h)(1). This legal authority requires any Federal agency to provide SSA with information in its possession that SSA may require for making a timely determination of the amount of reduction required under section 224 of the Act for workers' compensation offset.

Purpose(s): This agreement establishes the terms, conditions, and safeguards under which DOL will disclose the DOL-administered Part C BL benefit data to SSA. SSA will match DOL's Part C BL data with SSA's records of persons receiving Social Security disability benefits to verify that Part C BL beneficiaries are receiving the correct amount of Social Security disability benefits.

Categories of Individuals: The individuals whose information is involved in this matching program are those individuals who are receiving Part C BL benefits and Social Security disability benefits.

Categories of Records: DOL's monthly extract file will contain each Part C BL beneficiary's Social Security number (SSN), name, date of birth, date of entitlement, payment status, current benefit amount, and effective date of the current benefit amount. SSA will determine which of the beneficiaries are receiving Social Security disability benefits and match the DOL data against the SSN, type of action code, and offset type for those beneficiaries in SSA's Master Beneficiary Record (MBR).

System(s) of Records: SSA will match the DOL extract file against the MBR, 60–0090, last fully published at 71 FR 1826 (January 11, 2006), as amended at 72 FR 69723 (December 10, 2007), 78 FR 40542 (July 5, 2013), 83 FR 31250–31251 (July 3, 2018), and 83 FR 54969 (November 1, 2018). DOL's extract file is from DOL's Office of Workers' Compensation Programs (OWCP), BL Benefit Payments file, DOL/OWCP–9, last fully published at 81 FR 25765 (April 29, 2016).

[FR Doc. 2022–08598 Filed 4–21–22; 8:45 am]

BILLING CODE P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2021–0042]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Department of Labor (DOL).

DATES: Submit comments on the proposed matching program on or before May 23, 2022. The matching program will be applicable on May 25, 2022, or once a minimum of 30 days after publication of this notice has elapsed, whichever is later. The matching program will be in effect for a period of 18 months.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2021–0042 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *https://www.regulations.gov.* Use the *Search*

function to find docket number SSA–2021–0042 and then submit your comments. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each submission manually. It may take up to a week for your comments to be viewable.

2. *Fax:* Fax comments to (410) 966–0869.

3. *Mail:* Matthew Ramsey, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, or emailing *Matthew.Ramsey@ssa.gov.* Comments are also available for public viewing on the Federal eRulemaking portal at *https://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Melissa Feldhan, Division Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, G–401 WHR, 6401 Security Boulevard, Baltimore, MD 21235–6401, at telephone: (410) 965–1416, or send an email to *Melissa.Feldhan@ssa.gov.*

SUPPLEMENTARY INFORMATION: Under this matching program, DOL will disclose the DOL-administered Part B Black Lung (BL) benefit data to SSA. SSA will match DOL's Part B BL data with SSA's records of persons receiving Supplemental Security Income (SSI) to verify that Part B BL beneficiaries are receiving the correct amount of SSI payments.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Participating Agencies: SSA and DOL.

Authority for Conducting the Matching Program: The legal authority for this agreement is section 1631(f) of the Social Security Act, 42 U.S.C. 1383(f). This legal authority requires any Federal agency to provide SSA with information in its possession that SSA may require for making a determination of eligibility for, or the proper amount, of SSI payments.

Purpose(s): This agreement establishes the terms, conditions, and safeguards under which DOL will disclose the DOL-administered Part B BL benefit data to SSA. SSA will match DOL's Part B BL data with SSA's records of persons receiving SSI to verify that Part B BL beneficiaries are receiving the correct amount of SSI payments.

Categories of Individuals: The individuals whose information is involved in this matching program are those individuals who are receiving Part B BL benefits and SSI benefits.

Categories of Records: DOL's monthly extract file will contain each Part B BL beneficiary's Social Security number (SSN), name, date of birth, date of entitlement, payment status, current benefit amount, and effective date of the current benefit amount. SSA will determine which of the recipients are receiving SSI payments and match the DOL data against the SSN, type of action code, and income type for those recipients in SSA's Supplemental Security Income Record and Special Veterans Benefits (SSR/SVB) system of records.

System(s) of Records: SSA will match the DOL extract file against the SSR/SVB (60–0103) system of records, last fully published on January 11, 2006 (71 FR 1830), as amended on December 10, 2007 (72 FR 69723), July 3, 2018 (83 FR 31250–31251), and November 1, 2018 (83 FR 54969). DOL's extract file is from DOL's Office of Workers' Compensation Programs, BL Benefit Payments file (OWCP–9), last fully published on April 29, 2016 (81 FR 25765).

[FR Doc. 2022–08599 Filed 4–21–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0211]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Aviation Insurance

AGENCY: Federal Aviation Administration (FAA), Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval renewal information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 18, 2022. The collection involves obtaining basic information from new aviation insurance applicants about eligible aviation insurance applicants needed to establish a legally binding, non-premium insurance policy with the FAA, as requested by another Federal agency, such as the applicants name and address, and the aircraft to be covered by the policy. The information collected will be used to determine whether applicants are eligible for Chapter 443 insurance and the amount of coverage necessary; populate non-premium insurance policies with the legal name and address; and meet conditions of coverage required by each insurance policy.

DATES: Written comments should be submitted by April 15, 2022.

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: Subject Matter Expert (SME) James Poe by email at: *James.Poe@faa.gov;* phone: 301–432–3196.

SUPPLEMENTARY INFORMATION: As a condition of coverage, air carriers will be required to submit any changes to the basic information initially submitted on the application, as necessary. Air carrier's will also be responsible for providing a copy of their current commercial insurance policy on an ongoing basis, and aircraft registration and serial numbers for any new aircraft the air carrier would like to add to the policy. This information will form part of a legally binding agreement (*i.e.,* insurance policy) between the FAA and air carrier. Failure to provide this updated information could result in lack or denial of coverage.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0514.

Title: Aviation Insurance.

Form Numbers: 2120–0514.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period

soliciting comments on the following collection of information was published on February 18, 2022 (87 FR 9413). Title 49 U.S.C. 44305 authorizes the Administrator of the Federal Aviation Administration, acting pursuant to a delegation of authority from the Secretary of Transportation, to provide aviation insurance at the request of another Federal agency, without premium, provided that the head of the Federal agency agrees to indemnify the FAA from loss.

The FAA Non-Premium Aviation War Risk Insurance Program offers war risk coverage, without premium, to air carriers at the request of DoD and other Federal agencies. DoD and other Federal agencies rely on the FAA to provide aviation war risk insurance to contracted air carriers supporting mission objectives and operations that is not available commercially on reasonable terms and conditions. Air carriers never insured under the FAA Non-Premium War Risk Insurance Program must submit an application before the FAA can provide coverage.

Respondents: The FAA currently insure 31 U.S. air carriers through its Non-Premium Aviation Insurance Program at the request of other Federal agencies. We estimate the addition of one new air carrier to the program each year. In addition, air carriers insured will be required to provide and update information on an ongoing basis as a condition of insurance coverage and to remain eligible for insurance policy renewals.

Frequency: The initial application for insurance is required only from air carriers that have not previously received aviation insurance from the FAA. We estimate one new air carrier will need to submit an application annually; 6 insured air carriers will need to update basic information submitted on their initial application, such as business name and/or address, annually; 31 insured air carriers will be required to provide one commercial insurance policy to the FAA annually by uploading an electronic image into the FAA's Aviation Insurance Data Management System (AIDMS) annually; and 31 insured air carriers will need to update their Schedule of Aircraft with aircraft registration data adding and removing a total of 550 aircraft to or from AIDMS, annually.

Estimated Average Burden per Response: Initial Application—4 hours; Commercial Policy Submission—10 minutes; Business Information Update—5 minutes; and Aircraft Schedule Update—2 minutes per aircraft.

Estimated Total Annual Burden: 28 Hours.

Issued in Boonsboro, MD, on April 19, 2022.

James W. Poe, III,

Program Manager, Aviation Insurance, Command and Control Communications (C3) Division (AXE–400), Office of National Security Programs and Incident Response, Federal Aviation Administration.

[FR Doc. 2022–08645 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Tampa International Airport (TPA) Airport, Tampa, Florida

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

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps (NEMs) submitted by the Hillsborough County Aviation Authority for Tampa International Airport under the provisions of the Aviation Safety and Noise Abatement Act and are in compliance with applicable requirements.

DATES: The effective date of the FAA's compliance determination on the NEMs is April 14, 2022.

FOR FURTHER INFORMATION CONTACT: Amy Reed, Federal Aviation Administration, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, Florida 32819, (407) 487–7297.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the NEMs submitted for the Tampa International Airport (TPA) are in compliance with applicable requirements of title 14 Code of Federal Regulations (CFR) part 150, effective April 14, 2022. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (''the Act''), an airport operator may submit to the FAA NEMs which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport Sponsor who has submitted NEMs that are found by the FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program (NCP) for FAA approval which sets forth the measures the Sponsor has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the NEMs and accompanying documentation submitted by Hillsborough County Aviation Authority. The documentation that constitutes the ''NEMs'' as defined in 14 CFR 150.7 includes: Final 2021 Existing Conditions Noise Exposure Map (Figure J–1); Final 2026 Future Conditions Noise Exposure Map (Figure J–2); Fixed-Wing Flight Tracks—North Flow (Figure J–3); Fixed-Wing Flight Tracks—South Flow (Figure J–4); Helicopter Flight Tracks—All Flows (Figure J–5); and the Final Noise Exposure Map Report and its appendices. The FAA has determined that these NEMs and accompanying documentation are in compliance with applicable requirements. This determination is effective on April 14, 2022.

FAA's determination on the airport Sponsor's NEMs is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of 14 CFR part 150. Such determination does not constitute approval of the Sponsor's data, information, or plans, and is not a commitment to approve a NCP or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a NEM submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the NEMs to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government and remain unchanged by FAA's NEM compliance determination under 14 CFR part 150. The responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport Sponsor that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the Hillsborough

County Aviation Authority, under 14 CFR 150.21, that the statutorily required consultation has been accomplished.

Copies of the full NEM documentation are available for examination by appointment at the following locations:

Federal Aviation Administration: Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, Florida 32819.

Tampa International Airport: 4100 George J Bean Pkwy., Tampa, FL 33607.

Direct questions or to arrange an appointment to review the documents to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, on April 19, 2022.

Bartholomew Vernace,

Manager, Orlando Airports District Office.

[FR Doc. 2022–08589 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0201]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Certification: Pilots and Flight Instructors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 15, 2022. FAA regulations prescribe certification standards for pilots, flight instructors, and ground instructors. The information collected is used to determine compliance with applicant eligibility.

DATES: Written comments should be submitted by May 23, 2022.

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: Jean Hardy by email at: *jean.hardy@faa.gov.* Phone: 207–289–7287.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0021.

Title: Certification: Pilots and Flight Instructors.

Form Numbers: 8710–1, 8710–13.

Type of Review: This is a renewal of an existing information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 15, 2022 (87 FR 8631). Persons applying for an airman certificate under part 61 are mandated to report information using the Airman certificate and/or Rating Application form and the required records, logbooks and statements to the Federal Aviation Administration (FAA) Flight Standards District Offices or its representatives on occasion. This information is used to determine qualifications of the applicant for issuance of a pilot or instructor certificate, or rating or authorization. The FAA estimates that there are approximately 825,000 active certificated pilot airmen. This includes student, private, commercial, airline transport pilot certificate holders, as well as ground and flight instructors. Approximately 25% of these pilots are providing data on an annual basis. Instructor certificates must be renewed every 24 months to remain effective. If the information collection were not conducted, the FAA would be unable to issue the appropriate certificates and ratings. Persons applying for a remote pilot certificate with a small UAS rating under part 107, are mandated to report information using the FAA Form 8710–13, Remote Pilot Certificate and/or Rating Application. For applicants who do not hold a pilot certificate under part 61, the Remote Pilot Certificate and/or Rating Application is submitted along with a documentation demonstrating that the applicant passed an aeronautical knowledge test. For applicants who hold a pilot certificate under part 61 and meet the flight review requirements of § 61.56, the Remote Pilot Certificate and/or Rating Application is submitted with evidence of completion of the training program is estimated to be approximately 25 percent of the population of active certificated pilots and instructors. Given a population of 825,000, the result is approximately 206,250 respondents providing data on an annual basis. The total number of applicants for a remote pilot certificate with a small UAS rating is estimated to be 39,229 annually.

Respondents: Existing and prospective airmen.

Frequency: On occasion.

Estimated Average Burden per Response: Approximately 15 minutes per response.

Estimated Total Annual Burden: 333,194 hours per year for reporting and recordkeeping.

Issued in Washington, DC, on April 19, 2022.

Dwayne C. Morris,

Project Manager, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2022–08626 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0014]

Agency Information Collection Activity Under OMB Review: Rail Fixed Guideway Systems; State Safety Oversight

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection: Rail Fixed Guideway Systems; State Safety Oversight.

DATES: Comments must be submitted before June 21, 2022.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic

submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

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

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Ruth Lyons (202) 366–2233 or email: *Ruth.Lyons@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Rail Fixed Guideway Systems; State Safety Oversight

(OMB Number: 2132–0558)

Background: FTA administers a national program for public transportation safety under 49 U.S.C. Section 5329. One element of this program, at 49 U.S.C. 5329(e), requires States to oversee the safety of the rail transit agencies (RTAs) in their jurisdictions, including heavy and light rail systems, streetcars, inclined planes, cable cars, monorail/automated guideways and hybrid rail. Through this program, State Safety Oversight Agencies (SSOAs) ensure that RTAs identify and address safety risks, follow their safety rules and procedures, and take corrective action to address safety deficiencies.

The information collection activities request is for a renewal without change of a currently approved collection. The information collection focus is on the activities of SSOAs and RTAs to report information to FTA. This request for renewal of an existing information collection does not reflect any changes as a result of the Bipartisan Infrastructure Law. In the event that FTA updates State Safety Oversight requirements, FTA will seek comment from stakeholders through the publication of a separate **Federal Register** Notice outside of the Paperwork Reduction Act process.

The information collection request includes the annual report FTA requires from SSOAs, FTA's grant management reporting requirement and the triennial audit program, which requires information from both SSOAs and RTAs. Further, the information collection continues to reflect requirements for SSOAs and RTAs to respond to FTA directives and advisories, and SSOAs participation in monthly teleconference calls with FTA. Finally, the information collection request includes RTA event notifications to FTA.

Estimated Annual Number of Respondents: 96 respondents.

Estimated Annual Number of Responses: 1,454.

Estimated Total Annual Burden Hours: 16,366 hours.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2022–08544 Filed 4–21–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

[Docket No. OFAC–2022–0002]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for the Release of Blocked Funds; Electronic License Application Form

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's Electronic License Application Form TD–F 90–22.54, which is referred to throughout this Notice as the ''OFAC Application for the Release of Blocked Funds.''

DATES: Written comments must be submitted on or before June 21, 2022 to be assured of consideration.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions on the website for submitting comments.

Email: OFACreport@treasury.gov with Attn: Request for Comments (OFAC Application for the Release of Blocked Funds).

Instructions: All submissions received must include the agency name and refer to Docket Number OFAC–2022–0002 and the OMB control number 1505–0170. Comments received will be made available to the public via *https://www.regulations.gov* or upon request, without change and including any personal information provided.

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

SUPPLEMENTARY INFORMATION:

Title: OFAC Application for the Release of Blocked Funds.

OMB Number: 1505–0170.

Type of Review: Extension without change of a currently approved collection.

Description: Transactions prohibited pursuant to the Trading With the Enemy Act, 50 U.S.C. 4301 *et seq.,* the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.,* and other authorities may be authorized by means of specific licenses issued by OFAC. Such licenses are issued in response to applications submitted by persons whose property and interests in property have been blocked or who wish to engage in transactions that would otherwise be prohibited. The OFAC Application for the Release of Blocked Funds, which provides a standardized method of application for all applicants seeking the unblocking of funds, is available in electronic format on OFAC's website. By obviating the need for applicants to write lengthy letters to OFAC, this form reduces the overall burden of the application process. Since February 2000, use of the OFAC Application for the Release of Blocked Funds to apply for the unblocking of funds has been mandatory pursuant to a revision in OFAC's regulations at 31 CFR 501.801. *See* 65 FR 10707 (February 29, 2000). Applications to OFAC for the release of blocked funds can be made via the electronic licensing portal here: *https://home.treasury.gov/policy-issues/financial-sanctions/ofac-license-application-page.*

Affected Public: The likely respondents and record-keepers affected by this collection of information are U.S. financial institutions, U.S. individuals/businesses, other for-profit institutions, and non-governmental organizations.

Estimated Number of Respondents: Based on recent data received and trends, the estimate for the number of unique reporting respondents is approximately 4,000 respondents per year.

Frequency of Response: The estimated annual frequency of responses is approximately 1 per respondent, based on average transaction volume.

Estimated Total Number of Annual Responses: The estimated total number of responses per year is approximately 4,000.

Estimated Time per Response: OFAC assesses that there is an average time estimate of 40 minutes per response.

Estimated Total Annual Burden Hours: The estimated total annual reporting burden is approximately 2,667 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–08656 Filed 4–21–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

[Docket No. OFAC–2022–0001]

Agency Information Collection Activities; Proposed Collection; Comment Request for Persons Providing Travel and Carrier Services to Cuba

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's information collection requirements for persons providing authorized travel or carrier services related to Cuba, which are contained within the Cuban Assets Control Regulations.

DATES: Written comments must be submitted on or before June 21, 2022 to be assured of consideration.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions on the website for submitting comments.

Email: OFACreport@treasury.gov with Attn: Request for Comments (Cuban Travel and Carrier Services).

Instructions: All submissions received must include the agency name and refer to Docket Number OFAC–2022–0001 and the Office of Management and Budget (OMB) control number 1505–0168. Comments received will be made available to the public via *https://www.regulations.gov* or upon request, without change and including any personal information provided.

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

SUPPLEMENTARY INFORMATION:

Title: Persons Providing Travel and Carrier Services to Cuba.

OMB Number: 1505–0168.

Type of Review: Extension without change of a currently approved collection.

Description: Requirements to retain records are codified in § 515.572(b) of the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''). Persons subject to U.S. jurisdiction who provide authorized travel or carrier services related to Cuba are required to maintain for at least five years from the date of the transaction a certification from each customer indicating the name and address of each customer and the section of the Regulations (in the case of generally licensed travel), or the specific license number, that authorizes the person to travel to Cuba.

The records covered by this information collection must be provided on request to the U.S. Department of the Treasury and will be used to monitor compliance with regulations governing persons subject to U.S. jurisdiction, including travel agents, airlines and vessel operators, providing authorized travel and carrier services with respect to Cuba and persons who travel to Cuba.

Forms: Section 515.572(b)(1) does not specify any particular form of recordkeeping.

Affected Public: Individuals, households, travel and carrier businesses, other for-profit businesses, non-governmental organizations. The likely respondents and record-keepers affected by this collection of information are U.S. travel and carrier businesses.

Estimated Number of Respondents: OFAC estimates, based on multiple sources including data received from the U.S. Department of Homeland Security, U.S. Customs and Border

Protection, and information collected by OFAC, that the number of unique record-keepers is approximately 35,000 per year. OFAC believes the significant decline in the number of unique respondents over the past three years is largely due to a change in methodology, including improved data, as well as to other factors discussed below. Pursuant to this methodology, OFAC has identified a smaller number of travel service providers but a larger number of records per respondent. OFAC believes that the decline in the number of unique respondents can also be attributed to the following: (1) An overall decline in travel worldwide due to the Coronavirus Disease 2019 (COVID–19) pandemic; (2) OFAC's elimination of the group people-to-people educational travel authorization in June 2019; and (3) amendments to the Department of Commerce's Bureau of Industry and Security's regulations that restrict the temporary sojourn of aircraft and vessels to Cuba, also in June 2019. OFAC assesses that the number of annual trips will likely slowly increase over the coming three years if travel restrictions due to the COVID–19 pandemic continue to ease, although there is some uncertainty due to the ongoing pandemic.

Estimated Number of Records per Respondent: Based on newly acquired data and OFAC's revised methodology, the estimated number of records is approximately 10 per respondent. (Some recordkeepers may keep far more records and some far less; 10 is an average.)

Estimated Total Number of Annual Records: Based on additional data and OFAC's revised methodology, the estimated total number of annual records is approximately 350,000. OFAC has factored into our assessment a likely increase in travel between the United States and Cuba over the next three years as pandemic travel restrictions ease, but believes that numbers of travelers will not rise to levels present when a wider variety of types of travel to Cuba were generally licensed.

Estimated Time per Record: OFAC assesses that there is an average time estimate of 1 minute per record.

Estimated Total Annual Burden Hours: The estimated total annual reporting burden is approximately 5,800 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and included in OFAC's request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–08657 Filed 4–21–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–XXXX]

Agency Information Collection Activity: Veterans Engagement Action Center (VEAC) Surveys

AGENCY: Veterans Experience Office, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Experience Office (VEO), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before 4/29/2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Evan Albert, Director of Measurement, Veterans Experience Office, EMD Directorate, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *evan.albert@va.gov.* Please refer to ''VEAC Survey Feedback'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''VEO VEAC Survey Feedback'' in any correspondence.

Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VEO invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VEO's functions, including whether the information will have practical utility; (2) the accuracy of VEO's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: FY2021 MILCON House report 116–445.

Title: Veterans Engagement Action Center (VEAC) Surveys.

OMB Control Number: None.

Type of Review: New collection.

Abstract: Veterans Experience Action Center (VEAC) is a Veterans Affairs (VA) program established to proactively assist Veterans in a selected state with a one-stop resource for all their needs. The VEAC brings together VA benefits, health care and other resources in partnership with state VA resources.

The VEAC gathers feedback from Veterans, Active Military, Guard/Reservist, Family members, caregivers, providers, and survivors. The VEAC then provides that feedback to VA leaders to measure the success of the outreach event and measure the ease, effectiveness, emotion, and trust from the participants as they exit. The surveys will further allow the Veterans Experience Office (VEO) to measure whether the needs of the participants were met. Additional areas where the survey results will impact:

- Identifies gaps and challenges in health care, benefits, and service delivery.
- Identifies areas for how VA can best support local efforts in a holistic fashion.

• Identifies areas where there may be barriers to access, and outreach tailored to local communities.

Per FY2021 MILCON House report 116–445, the Committee directs the VA to provide quarterly reports on the status of the implementation of the VEAC pilot program; the effectiveness of the pilot program at reaching Veterans, particularly those in need, and increasing utilization of VA services:

• Congress Quarterly Congressional Tracking Reports (CTRs)

VEAC surveys afford VEAC participants the ability to provide feedback to VA and allow the customer to share their experiences. VEO uses the customer's feedback to enhance and increase outreach and engagement efforts and determine the direct value of our efforts.

The surveys and its delivery are an innovative approach to measure and improve customer experience based on the ''voice of the Veteran.'' Through the use of the VSignals digital platform, VEO can identify gaps and challenges in the community, provide information on VA programs, increase access and outreach, identify what is and what is not working, and determine how VA can best support local community efforts in support of Veterans, families, caregivers, and survivors. The Veteran Experience Office (VEO) has also been commissioned to measure the satisfaction of Peer-to-Peer organizations and veterans who recently interacted with the VEAC.

Survey respondents will be Veterans, Active Military, Guard/Reservist, family members, caregivers, and survivors that attend a VEAC event. Some VEAC participants may also be offered to provide feedback to surveys that capture their experience through their Peer-to-Peer connections or their attendance on a Veterans Experience Live Question and Answer event. Different surveys may be administered participants of events:

1. *VEAC Exit Survey:* Outreach event staff will verbally administer the survey to event attendees as the last step in the overall event process. The outreach staff will fill out the web-based survey on behalf of the outreach event participant.

2. *VEAC Email Survey:* A survey will be sent via email to event attendees that were not able to take the VEAC Exit Survey. The email survey will not be sent to event attendees that opted out of the VEAC Exit Survey.

3. *Peer-to-Peer Survey:* The survey is completed via an email-based survey design. After a Peer-to-Peer organization interacts with a VEAC Representative, the VEAC Representative will send an email to the Peer-to-Peer organization with a link to the Vsignals survey. The Peer-to-Peer organization can take the survey and share the survey to Veterans via email at the conclusion of each Peer-to-Peer interaction. Peer-to-Peer organizations and veterans will choose whether they want to participate in the survey.

Affected Public: Individuals.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden per Respondent: 4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 16,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–08628 Filed 4–21–22; 8:45 am]

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Part II

Department of Justice

Drug Enforcement Administration

Brenton D. Wynn, M.D.; Decision and Order; Notice

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 20–10]

Brenton D. Wynn, M.D.; Decision and Order

On February 20, 2020, a former Acting Administrator of the Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter collectively, OSC) to Brenton D. Wynn, M.D. (hereinafter, Respondent). Administrative Law Judge Exhibit (hereinafter, ALJ Ex.) 1 (OSC), at 1. The OSC immediately suspended Respondent's DEA Certificate of Registration Number BW7210759 (hereinafter, registration or COR) ''because [Respondent's] continued registration constitutes an 'imminent danger to the public health or safety.' '' *Id.* (citing 21 U.S.C. 824(d)). The OSC also proposed revocation of Respondent's registration, the denial of any pending applications for renewal or modification of such registration, and the denial of any pending applications for any additional DEA registrations pursuant to 21 U.S.C. 824(a)(4) and 823(f), because Respondent's ''continued registration is inconsistent with the public interest.'' *Id.*

In response to the OSC, Respondent timely requested a hearing before an Administrative Law Judge. ALJ Ex. 2. The hearing in this matter was conducted on November 16–20, 2020, via video teleconference technology. On December 30, 2020, Administrative Law Judge Mark M. Dowd (hereinafter, the ALJ) issued his Recommended Rulings, Findings of Fact, Conclusions of Law and Decision (hereinafter, Recommended Decision or RD) to which neither party filed Exceptions. The ALJ transmitted the record to me on January 25, 2021. Having reviewed the entire record, I adopt the ALJ's rulings, findings of fact, as modified, conclusions of law and recommended sanction with minor modifications, where noted herein. I issue my final Order in this case following the Recommended Decision.*[A]

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge *[B 1 2 3]

The issue to be decided by the Administrator is whether the record as a whole establishes by a preponderance of the evidence that the DEA Certificate of Registration, No. BW7210759, issued to Respondent should be revoked, and any pending applications for modification or renewal of the existing registration should be denied, and any pending applications for additional registrations should be denied, because his continued registration would be inconsistent with the public interest under 21 U.S.C. 823(f) and 824(a)(4).

After carefully considering the testimony elicited at the hearing, the admitted exhibits, the arguments of counsel, and the record as a whole, I have set forth my recommended findings of fact and conclusions of law below.

The Allegations *[C 4]

Overview

[The Government alleged Respondent violated federal and California law by issuing numerous controlled substance prescriptions outside the usual course of professional practice and not for a legitimate medical purpose to four individuals between September 2016 and September 2019. ALJ Ex. 1. Specifically, the Government alleged that Respondent violated 21 CFR 1306.04(a) and the following state laws and regulations:*[D]

a. Cal. Health & Safety Code § 11153(a), requiring that a ''prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice'';

b. Cal. Health & Safety Code § 11154(a), directing that ''no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person . . . not under his or her treatment for a pathology or condition . . .'';

c. Cal. Bus. & Prof. Code § 2242, prohibiting the ''[p]rescribing, dispensing, or furnishing [of controlled substances] . . . without an appropriate prior examination and a medical indication,'' the violation of which constitutes unprofessional conduct;

d. Cal. Bus. & Prof. Code § 2234, defining unprofessional conduct to include: ''[g]ross negligence''; ''[r]epeated negligent acts''; ''[i]ncompetence''; or ''[t]he commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon''; and

e. Cal. Bus. & Prof. Code § 725, further defining unprofessional conduct to include ''[r]epeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs. . . .''

Additionally, the Government alleged that Respondent issued prescriptions outside of California's applicable standard of care as outlined in the ''Guide to the Laws Governing the Practice of Medicine by Physicians and Surgeons,'' Medical Board of California, 7th ed. 2013 (the ''Guide''). *See* ALJ Ex. 1. The Government alleged that these prescriptions fell below the standard of care applicable to the practice of medicine in California, and that therefore, these prescriptions violated federal and California State law.

The OSC provided specific examples of Respondent's alleged failures related to his prescribing controlled substances to the four individuals: D.P., J.K., D.L., and P.S. ALJ Ex. 1, at 4–10. Examples of the Government's allegations as to each patient included that Respondent: (1) Prescribed dangerous controlled substances and combinations of controlled substances resulting in high morphine milligram equivalent (MME) dosages without a medically legitimate basis; (2) failed to resolve red flags of diversion; (3) failed to discuss the risks of the prescribed controlled substances sufficiently to obtain informed consent; (4) failed to appropriately evaluate and monitor his patients; and/or (5) failed to document physical examinations and other information as required by the standard of care. The Government alleged that these failures constituted extreme departures from the standard of care in California. Because of these failures, the Government alleged that Respondent regularly put his patients at significant risk for harm, including overdose or death.]

*[A] I have made minor, nonsubstantive, and grammatical changes to the RD and nonsubstantive conforming edits. Where I have added to the ALJ's opinion to include additional information, I have noted the additions in brackets or in footnotes marked with an asterisk and a letter. Where I have made substantive changes, omitted language for brevity or relevance, or where I have modified the ALJ's opinion, I have noted the edits in brackets and have included specific descriptions of the modifications in brackets or in footnotes marked with an asterisk and a letter. Within those brackets and footnotes, the use of the personal pronoun ''I'' refers to myself—the Administrator.

*[B] I have ommitted the RD's discussion of the procedural history to avoid repetition with my introduction.

[1] [Omitted pursuant to n.*B.]

[2] [Omitted pursuant to n.*B.]

[3] [Omitted pursuant to n.*B.]

*[C] For brevity, I have omitted large portions of this section that were repetitive of the OSC and have replaced them with a summary of the allegations.

[4] [Omitted pursuant to n.*C.]

*[D] However, in its Posthearing Brief, the Government did not address Cal. Health & Safety Code § 11154(a), at all, and seemed to cite to Cal. Bus. & Prof. Code § 2234 to support the legal proposition that the Government does not have to establish that the misconduct was intentional. Because there is not adequate legal support in the Posthearing Brief for a finding regarding either of these state laws, I am not addressing them further herein.

The Hearing

Government's Opening Statement

The Government argued that the Controlled Substances Act sets up a closed system for distribution of pharmaceutical controlled substances from DEA registrants. Tr. 12. In order for that system to stay closed, the professionals entrusted with DEA registrations are expected and required to be professional. Doctors are expected to know the bounds of their profession, to prescribe within those bounds and rules, to know the dangers of controlled substances, and prescribe them in a matter that reflects those dangers. Tr. 12–13. When doctors fall short of these expectations they are supposed to be up front about it and change course. Tr. 13. The evidence in this case will show a doctor who is prescribing controlled substances in an unsafe manner and without regard to the rules on prescribing pain medication. The Respondent prescribed opioids at extremely high and dangerous levels and the Respondent did not adequately address the risks of combining opioids with other medications, such as benzodiazepines, with his patients. The Respondent also prescribed substances to patients with abnormal drug tests, including tests that were positive for drugs that patients should not have had in their system, or negative for prescribed substances that should have been in their system. The Respondent prescribed controlled substances in a dangerous manner that put his patients' lives at risk.

It is not the Government's burden to prove that every prescription the Respondent issued to every patient was outside the usual course of professional practice. Tr. 13–14. The Government expected that the Respondent would present the Tribunal with testimony from patients and other doctors who believed that Respondent is a good doctor and a good member of the community. Tr. 14. However, on balance, the character testimony and other testimony offered by the Respondent cannot outweigh the fact that the Respondent issued prescriptions that were both outside the course of usual and professional practice in California and not for a legitimate medical purpose.

At the closing of the case, the Government urged this Tribunal to look at the Government's evidence showing a doctor who put his patients in danger by not abiding by the requirements as established by the Controlled Substances Act and the laws of California for issuing controlled substances. The Government argued that Respondent's professional access to controlled substances is inconsistent with the public interest.

Respondent's Opening Statement

Respondent argued that this case is a reflection of a pain management specialist in San Diego with four patients, who represent less than one percent of his overall practice. Tr. 15. The patients with their high morphine milligram equivalent dosages were patients who came to him from a referral, already on these high doses. None of these patients passed away, of course. In all his years of practice, none of his patients have ever passed away due to an overdose or had to be transported to a hospital under a 911 service because of an overdose. The four patients the Government alleged represent an aberration in the sense of the high amount of opioid medications that they were taking.

The Respondent had evidence from expert witnesses that disputed the Government's case about whether in these particular patients the high amounts represented a breach in the standard of practice and therefore was practicing outside the scope of the law. Respondent said the evidence would show that the Respondent had consistently followed most if not all of the architectural requirements for a pain management doctor to follow patients who are being prescribed pain medication such as having pain management agreements, checking CURES reports, doing urine screens, or other types of screening. Tr. 16. The Respondent's experts told the Court that the Respondent exceeded the standards of practice at the time with how he followed these patients with numerous drug screens, frequent visits, and close monitoring. There was a dispute between the experts about the degree to which these patients should have been on these medications and the Respondent's efforts to try to bring them off those high doses eventually.

Respondent said that the Tribunal would see, upon review of the records, that the documentation from the Respondent's practice throughout the years with his patients had not followed best documentation practices. As a consequence of this, the Government's witnesses have made assumptions that certain things have occurred that did not, in fact, actually occur. The evidence included examples of inconsistent urine drug screen or blood sample screens where Respondent properly decided to continue to prescribe medications to the patients even though the records do not reflect the Respondent's analysis. Tr. 16–17.

The evidence, Respondent argued, would also show that none of the patients were diverting any medications or abusing them, and that the purposes of the Controlled Substances Act, to guard against diversion or abuse by patients, had not been fulfilled here because there was no diversion and no abuse of the medications. Tr. 17.

In the end, ''the documentation fails in instances throughout the patients' care and [the Respondent] has taken steps to improve his documentation.'' Tr. 17. Evidence will show that the Respondent has taken a medical record-keeping course from the University of San Diego. He has also taken a prescribing course from the University of San Diego to enhance his future practice. In the end, the Respondent asked the Tribunal to allow the Respondent to retain his certificate. If monitoring conditions need to be attached to that, then the Respondent said that he would fully follow those conditions. The Respondent argued that he represents a very significant provider in an under-served, under-privileged community in San Diego that needs doctors like him. Tr. 17–18.

Government's Case-in-Chief

The Government presented its case-in-chief through the testimony of two witnesses. First, the Government presented the testimony of a Diversion Investigator. Secondly, the Government presented the testimony of its expert, Timothy Munzing, M.D.

Diversion Investigator (DI)

DI has been a DI for thirty-two years. Tr. 21, 47. As a DI, her duties include the enforcement of the Controlled Substances Act, specifically the CFR, which is the Code of Federal Regulations as they pertain to DEA registrants and controlled substances. Her duties also include regularly inspecting and investigating DEA registrants and their handling and accountability of controlled substances and detecting any diversion from the licit to illicit market.

She investigates any DEA registrant, including doctors and pharmacists, to ensure they are following the requirements of the Controlled Substances Act and California regulations and that they are prescribing controlled substances in the usual course of professional practice and for legitimate medical purposes. Tr. 22, 57–58. As a DI, she is looking for instances or examples of overprescribing as they tend to suggest that the patient may not be taking prescriptions as he should, and oftentimes is diverting them. Tr. 48. She has found that some physicians are

prescribing a lot of opiates and that there is a severe problem with physicians overprescribing and patients diverting drugs.

In order to conduct her investigations, she uses information technology, the computer, for analyzing records. Tr. 22. She uses Excel spreadsheets, computer technology in the tables that she inserts inside the Excel spreadsheets, and subpoenas to obtain records and conduct auditing. Tr. 21–22.

DI first learned about the Respondent when a pharmacist came to the DEA's office in October of 2018. Tr. 22. The pharmacist wanted to report several physicians that she believed were excessively prescribing controlled substances, which included the Respondent. This is just one way an investigation can begin.

After DI looked up the Respondent in the DEA's system and identified his DEA registration, she then accessed California's Prescription Drug Monitoring Program (PDMP), called CURES, and ran a two-year CURES report on the Respondent's prescribing, which included March 17, 2017, to March 19, 2019. Tr. 23. The CURES report showed that the Respondent had dispensed over 590,000 dosage units of schedule II to V controlled substances to patients, which in DI's experience is an extremely high number and warranted further investigation. Tr. 23–24, 51–52. Through this further investigation, she discovered that the most frequent drug the Respondent was prescribing was oxycodone, of various strengths. Tr. 24, 51.[5] The next highest drug was hydrocodone. Tr. 25, 51. The DI believed that the high dosages warranted further investigation. Tr. 25.

While looking through the CURES report, she relied on the morphine milligram equivalent (MME) that the CDC recommends for the daily dosage amount. Tr. 48–49. For oxycodone, it is currently ninety milligrams a day. Tr. 49. When she did her review, she could tell without even doing calculations that it was going to be extremely high, especially for one particular patient that was receiving almost 200 MME of four different strengths of immediate relief oxycodone every week. She had never seen anything like that. Tr. 49. There is no standard protocol to investigate at a certain level of total MME, rather, investigations are based on various factors. These factors include the fact that a pharmacist reported the Respondent to the DEA, as the DEA relies on pharmacists or others that regularly fill prescriptions. Tr. 49–50. Other factors include where a patient lives, the distances a patient travelled, criminal history, whether the patient is going to various physicians, how often the patient is going somewhere, and if the same drugs are consistently being prescribed over and over in high quantities. Tr. 50–51.

After reviewing the CURES data, she reviewed a ''pivot table'' she had created and identified the patients who were obtaining the most prescriptions for controlled substances. Tr. 25. She identified eight patient records to review, but only selected six of those to submit for medical review, as six was sufficient to obtain a meaningful opinion on the Respondent's prescribing. Tr. 52, 53–54. Next, she obtained the medical records and medical charts of the identified patients to have them reviewed by a government expert to determine if the prescribing was appropriate. Tr. 25.

She also reviewed the Respondent's DEA registration, No. BW7210759, which identified his name and his business address or his registered address and the controlled substances for which he has privileges. Tr. 38. She discovered he became registered in April 2001, with an expiration date of May 31, 2022. She also obtained the history of when he initially got the registration, any changes to his registration as far as address, state license, updates, and renewal fees. Tr. 38–39; GX 1.[6] She looked the Respondent up on the internet and learned that he specialized in pain management. Tr. 51.

On June 26, 2019, DI issued an administrative subpoena to the Respondent, which requested six patients' medical records. Tr. 26–27; GX 16. The Respondent complied with the subpoena within a few days by providing the patients' records in a paper format. Tr. 27–28.

DI issued subpoenas to pharmacies where the subject patients had filled their prescriptions according to the CURES report. Tr. 28. The pharmacies complied with the subpoenas by providing copies of prescriptions, which DI saved, and they became part of her investigatory file.

DI asked Dr. Munzing if he had time to assist with the investigation by reviewing patient files. Tr. 37. She chose Dr. Munzing because the DEA had used Dr. Munzing in other investigations, he was therefore already in the system and was available. Tr. 54–56. DI provided to Dr. Munzing all the medical records for the six patients listed in the subpoena on a CD, as well as the CURES report for the Respondent. Within a few weeks, Dr. Munzing provided a report that found four of the six patient files were very problematic and that the controlled substances being prescribed were outside the usual course of legal, professional, and medical practice. Tr. 37–38, 56. Dr. Munzing did not believe these prescriptions were medically legitimate and were an extreme departure from the standard of care, putting the patients at risk for side effects including addiction, overdose, and/or even overdose death. Tr. 38.

Dr. Timothy Munzing, M.D.

Dr. Munzing is a licensed physician in California and received his first medical license in approximately 1983. Tr. 61.[7] He received a Bachelor of Science in Biochemistry at the California State University at Fullerton and received his MD from UCLA in 1982. Tr. 62. From 1982–1985, he attended Family Medicine Residency through the Kaiser Permanent Foundation Hospital, which is now known as the Los Angeles Medical Center. Tr. 62–63. He became Board Certified in Family Medicine in 1985 and remains board certified. Tr. 63. He has been a family physician for about thirty five years and takes care of patients of all ages, from children to the elderly. He currently primarily takes care of adult patients. For the last thirty-two years he has been the founding residency director of a family medicine residency program, where he oversees twenty-four residents and a fairly sizeable faculty. In family medicine, he works closely with people in every specialty, including Internal Medicine, Pediatrics, OBGYN, anesthesia, and pain medicine. As a family doctor, he sees people for chronic pain as well as for high blood pressure, diabetes, and weight issues; he manages all of their conditions, sometimes seeking a sub-specialist, when needed. Tr. 319–20.

Dr. Munzing also sits on the National ACGME Family Medicine Review

[5] This included 1,700 prescriptions or 190,000 dosage units, which was almost thirty-two percent of all the prescriptions the Respondent issued. Tr. 24, 50.

[6] On cross-examination, the Respondent's counsel asked if DI was referring to notes during her testimony. Tr. 40. DI responded that she was referring to her notes and Dr. Munzing's report. The Respondent's counsel then requested that DI provide him a copy of her notes as well as Dr. Munzing's report. Tr. 41–42. After hearing from both counsel, the Tribunal ordered that the Government provide DI's notes to the Respondent's counsel via email, but did not order Dr. Munzing's be shared as DI's testimony was very general as to Dr. Munzing's findings and did not include anything outside the Order to Show Cause and Prehearing Statements. Tr. 42–47.

[7] Dr. Munzing's CV was entered into evidence. Tr. 61–62; GX 2.

Committee, as one of twelve individuals that accredits the 600-plus Family Medicine Residency Programs in America, as well as the fellowships under Family Medicine which includes Geriatrics, Addiction Medicine, and others. Tr. 63–64. He has been a Medical Expert Consultant for the Medical Board of California, also known as the Health Quality Investigation Unit for approximately sixteen-years. Tr. 64. He currently holds a DEA COR and maintains a clinical practice. Tr. 64. He typically spends about twenty-five to thirty percent of his time performing clinical work, including seeing patients in the residency office or at after-hours clinics or urgent care, and working as a preceptor. Tr. 64–65, 75–76; 315. When it is indicated and appropriate, Dr. Munzing prescribes controlled substances, such as opioid medications, benzodiazepines, sleeping medications, medications with codeine, and others. Tr. 65. He has treated and provided ongoing medical treatment to thousands of patients for acute and chronic pain throughout this career. Tr. 65. He treated patients in continuity for approximately thirty-years and only stopped this practice in approximately 2016 because he was asked to help develop the Kaiser Permanente School of Medicine, now called the Bernard J. Tyson School of Medicine. He no longer works at this medical school. Tr. 66; 315–16. He primarily works in the Orange County area at the Anaheim Hospital. Tr. 65–66, 76. There are no pain management specialists on cite at the Santa Ana office. Tr. 317–18.

In the course of his professional career, he has been called upon to provide opinions about the professionalism of physicians and the regulation of the practice of medicine. Tr. 66. In approximately his third year of practice, he was elected President of the medical staff and was responsible for overseeing professionalism. He was also on the Quality Improvement Committee and as a residency director he is essentially the person ultimately responsible for the quality and professionalism of the twenty-four residents and faculty. Tr. 66–67. He also precepts residents in their first, second, or third year of residency; Dr. Munzing is ultimately responsible for those patients and must review and countersign those records. Tr. 76. During his career, he has also sat on some national organizations for Family Medicine and Multi-disciplinary care including other specialties, reviewing professionalism. Tr. 67.

For approximately sixteen years, he has provided opinions in approximately 100 cases regarding professional physicians and the regulation of the practice of medicine regarding prescribing practices, as an expert for the Medical Board of California. Tr. 68, 342. For approximately the last six and a half years, he has provided opinions for a number of federal agencies including the DEA, Federal Bureau of Investigation (FBI), and the Department of Justice. Tr. 67, 341, 454. All of the cases with the federal agencies involved opiate and other controlled substance prescribing. Tr. 68. For Medical Board cases he charges $200 an hour and for the DEA, FBI, and DOJ, he charges $400 an hour for his expert work. Tr. 343–44.

He has been qualified as a medical expert in legal proceedings to opine on the standard of care for the legitimate use of opioids to treat pain approximately thirty-times. He has also been qualified as a medical expert in legal proceedings to opine on whether prescriptions were issued with a legitimate medical purpose in the usual course of professional practice ''many times.'' Tr. 67–68. [Dr. Munzing was qualified in this matter as ''an expert in pain management'' and in the ''standard of care for prescribing controlled substances in California.'' Tr. 77.]

According to Dr. Munzing, the standard of care is what a reasonable, prudent physician would do under the same or similar circumstances. Tr. 328. The standard of care generally allows for alternative means of diagnosis, and of treatment amongst reasonably competent, prudent physicians. Tr. 384. Within the field of pain management, there are accepted alternative judgments about what would be reasonable and prudent, or what would be included in a careful pain management plan. An exercise of judgment within the scope of the standard of care, can vary between reasonably prudent, careful physicians. Tr. 385. In fact, some physicians may have not chosen to even try to treat these four patients in this case.

Dr. Munzing became familiar with the standard of care for prescribing controlled substances in California through practicing in California and prescribing controlled substances and also by being a physician leader in California which required he be responsible for overseeing the quality, and standard, of care. Tr. 68–69. There are guides which inform the standard of care in California, including the Guide to the Laws Governing the Practice of Medicine by Physicians and Surgeons, which applies to both primary care and specialty care physicians. Tr. 70; GX 3.

Dr. Munzing has reviewed the Guide to the Laws Governing the Practice of Medicine by Physicians and Surgeons many times. Tr. 70–73. He has also studied the Guidelines for Prescribing Controlled Substances for Pain, as a clinician, physician leader, and a medical expert. Tr. 73. Dr. Munzing noted both documents inform the standard of care in California for prescribing controlled substances for pain. Based on his education and professional experience, he believes he can determine whether controlled substances are issued in the usual course of professional practice in California. Tr. 74.[8]

The Medical Board guidelines and Government Exhibits 3 and 4 lay out many of the guidelines that contribute to the standard of care; the guidelines pertain to both primary care physicians as well as physicians managing pain, regardless of specialty. Tr. 77–78, 82–83, 336; GX 3, 4. The standard of care is what a knowledgeable, reasonable physician would do if given the same set of circumstances. Tr. 82.

For each patient, the first thing a provider should do is take a history and perform an examination. Tr. 79, 83; GX 3, at 59. Depending on the specific complaint, the provider must evaluate the patient to decide if any other information is needed through laboratory tests, imaging studies, or other studies and make either a specific assessment diagnoses or likely diagnoses. The provider then does a risk stratification of the patient and determined what other medication problems he might have and how the provider may manage them. The provider then develops a management plan specific to his evaluation. If the plan includes controlled substances prescribing or other potentially dangerous treatments needing informed consent, the provider tells the patient the benefits and risks. Tr. 79–80. Once a provider starts managing the patient, he monitors them on a periodic, regular basis. Tr. 80. The specifics depend on the patient. The provider decides if he needs additional referrals or consultation in general. The provider should try to minimize the risk and maximize the benefits of treatment. All of these things should be documented in detail so that the provider and any future person managing the patient or reviewing the care can look at the documentation and get a detailed, truthful understanding about how the patient was on a particular date and what the reasoning was behind the management of that patient. Tr. 81.

[8] Without objection from the Respondent, the Tribunal qualified Dr. Munzing as an expert in pain management and also for presenting an expert opinion related to the standard of care for prescribing controlled substances in California. Tr. 76–77.

In continuing care situations for chronic pain management, a physician and surgeon should have a more extensive evaluation of the history, past treatment, diagnostic tests, and physical exams. Tr. 83, GX 3, at 59. When looking at chronic pain, it is not about someone who just twisted an ankle an hour ago with no other pain history. Tr. 83. Instead, a provider should know more about the patient and the chronicity, *i.e.* how did it start, how long has someone had it, what methods were used before, and what limitations the pain imposes. Tr. 83–84. Therefore, getting a detailed current assessment and history to find out what imaging studies, treatments, or physical therapies were performed and what medications were used is helpful for putting the patient's treatment in context. Tr. 84. There is also a lot of crossover between chronic pain and addictive issues [so a drug and alcohol history is needed]. Also, a mental health history is important to get including anxiety, depression, bipolar disease, ADD, etc. Tr. 85. It is also important to put the pain in context of who the patient is, because the provider's pain management may vary dramatically depending on the health or lack of health of the patient. Tr. 85.

A physician/surgeon should discuss the risks and benefits of the use of controlled substances and other treatment modalities with the patient, caregiver, or guardian. Tr. 85, 456; GX at 60. Again, the patient needs to understand the potential benefits, and the potential risks, as well as available alternatives. Tr. 85–86, 460. [According to Dr. Munzing, ''this all has to be well documented in their records.'' Tr. 87.] He further testified that, ''MME studies show that at 100, the risk of overdose [for a patient] goes up about 8.9-fold and the risk of overdose death is increased.'' Tr. 86. When an individual is on a combination of an opiate and a benzodiazepine, the increased risk of overdose death goes up tenfold. There is also a significant risk for addiction in patients that are on only moderate doses of opiates and benzodiazepines. Tr. 86.

Periodic review means the patient needs to be seen on a periodic basis. Tr. 86–87. The frequency of visits is often driven by the circumstances: The severity of pain, the level of medication, and the potential risk for side effects. So an ongoing monitoring would include getting vital signs, blood pressure, heart rate, respiratory rate, and performing an exam on the pertinent area on a regular basis or at every appointment. Tr. 87. The provider should also check CURES and periodically issue urine drug tests to ensure that the patient is taking what is being prescribed and not taking what is not being prescribed. [According to Dr. Munzing, periodic review also encompasses ''periodically reviewing the patient and constantly trying to assess their risk and whenever possible, try[ing] to . . . mitigate the risk by either bringing the dosage of medications down, using alternative strategies, [so] they can still benefit the patient but try to mitigate the risk.'' Tr. 87–88.]

In the event a doctor is unable to mitigate risks, and instead of tapering medications he decides to increase a patient's dosage of controlled substances, the doctor must well-document why the increase is necessary despite the increased risk and also note that the patient has been informed of the higher risk. Tr. 88. It is important to keep accurate and complete records when managing a patient, so a provider can look back and see how the patient was at a particular time. Tr. 88–89; GX 3 at 61. Equally important is, if the patient sees another provider for whatever reason, that other provider sees the justification for the patient's prescription and knows that the patient is aware of the risks and accepts those risks. Tr. 89. [According to Dr. Munzing, documentation, ''bottom line[,] is a patient safety issue.'' Tr. 88.]

To meet the standard of care in California, a provider must ensure that the medical history, examination, other evaluations, treatment plans, objectives, informed consent, treatments, medications, rationale, and agreement with the patient are well-documented in the medical records. Tr. 89–90.

The Medical Board of California also uses the Guidelines for Prescribing Controlled Substances for Pain in determining the standard of care for prescribing controlled substances in the State of California for physicians and other prescribers. Tr. 70, 73, 90–91; GX 4. These guidelines inform a provider's standard of care by laying out the specifics on what needs to be done. Tr. 91. The standard of care requires checking CURES for managing chronic pain, which the Respondent did with the four patients in this case. Tr. 91, 337, 360. The guidelines also require drug testing. The Respondent did urine drug screens on a frequent basis. Tr. 338. These guidelines are relevant for evaluating the Respondent's treatment of patients within the standard of care in California.

There is an increased risk of overdose death and overdoses when benzodiazepines and opioids are co-prescribed. Tr. 92. In 2016, the Center for Disease Control and Prevention (CDC) highlighted the risk of co-prescribing these controlled substances and the Food and Drug Administration (FDA) came out with a black box warning highlighting the risk of combining these two medications. Whenever possible, a provider should titrate down the benzodiazepine and if a provider is unable to do that, he should taper the opioid medications; co-prescribing these medications is ''significantly increasingly risky.'' Tr. 93.

The Patient Evaluation and Risk Stratification requirement addresses: The importance of completing a medical history and physical examination, performing a psychological examination for patients with long-term chronic opioid use for noncancerous pain, and provides examples of screening tools for mental health or potential addiction issues. Tr. 93–94; GX 4 at 12–13. Risk stratification is broken down into two components: (1) The risk of potential addiction or substance use disorder; [9] and (2) risk stratification as far as the overall health and well-being of the patient. Tr. 94. If a patient has other underlying conditions besides chronic pain that need to be dealt with, those need to be listed in the medical record as a provider is managing a patient as a whole person. Tr. 95. It is also important as it relates to informed consent, because the risk to a patient may be much higher if the patient has other chronic medical problems. Tr. 95–96.

''Ongoing Patient Assessment'' or ''monitoring'' involves following patients whose conditions are dynamic and have varying degrees of pain over time. Tr. 96; GX 4 at 17. A provider should also check CURES, perform point-of-care testing by checking urine screen for consistency, and may perform pill counts or other ways of monitoring. Tr. 97–98. There is also a confirmatory urine test that is much more extensive that looks in much finer detail at medications both prescribed and illegal. However, these tests are not always accurate. Tr. 98. The frequency of these drugs screens based on the standard of care in California is determined on risk stratification. Tr. 99. Different organizations contribute to this opinion, including the American Academy of Pain Medicine and the Agency Medical Directors Group in Washington State. The CDC generally recommends doing urine screens approximately quarterly when the MME is over 90 or 100. Some suggest as often as once a month, while

[9] According to Dr. Munzing, it has been shown that managing mental health issues appropriately is often a significant tool in decreasing the chronic pain one needs to manage. Tr. 94–95.

others maintain that if there are no inconsistencies or aberrances, quarterly is fine. If there are any aberrances that are unexplained, then the provider needs to strongly document why he is considering continuing prescribing at the same level, and that there was a strong consideration of trying to bring the medication level down. Tr. 99–100. Requiring more urine screens would not exceed the standard of care, but rather just meets the standard of care for that element. Tr. 100.

There are certain things that would drive a provider to taper to a lower, safer dosage, including the level of MMEs. Tr. 102; GX 4 at 20. A provider looks at intolerable side effects, if there is a failure to comply with the pain management agreement, or if there are aberrancies showing up that are not explained. A provider should also look at the overall risk of the treatment. Tr. 102–03. It is necessary to maintain accurate and adequate medical records from both a legal standpoint as well as a patient quality standpoint. Tr. 103; GX 4 at 22.

The CDC issued a fact sheet that gives instructions regarding conversion factors for calculating MMEs, which Dr. Munzing used in informing his opinion on the standard of care and usual course of professional practice in California. Tr. 104–06; GX 5. There is no maximum MME that a provider can prescribe because every patient is different; a provider needs to look at whether an opiate is appropriate and what dosing is appropriate. Tr. 106. However, the CDC and others recommend that providers try not to exceed 90 MME per day. Tr. 107. Although there is no absolute that one can never exceed, the provider should try to reduce the risk; and if a provider is exceeding 90 MME, the provider should provide documented justification for the dosage and document the patient's informed consent of the risk. Tr. 107–08; GX 5.

If a patient presents to a new doctor after having already prescribed at a dosage higher than 90 MME, the new doctor should perform a thorough history, examination evaluation, and whenever possible should get prior medical records to put the prescribing into context and confirm that the patient is really being prescribed that dosage. Tr. 108. The doctor should also look at urine drug tests, CURES, and the PDMP. If the doctor confirms that the patient is indeed taking that high dosage, the doctor should evaluate whether that high dose it is still appropriate at that time and look at the overall risk, including whether alternatives are available.*[E] Tr. 108–09. A doctor should then decide if he is able to reduce the medication of the patient slowly, while also incorporating other pain management strategies that will hopefully decrease the risk to the patient. Simply keeping the patient on the high MME because he was prescribed it before does not meet the standard of care in California. Continuing high dosages of opioids and controlled substance medications puts a patient at risk; not having side effects in the present does not prevent a patient from having problems with the higher dosage in the future. Tr. 109–10.[10]

The FDA document providing the black box warning describing the risks when combining opiate pain medication and benzodiazepines contributed to Dr. Munzing's opinion in the instant case as it relates to the standard of care and usual course of professional practice in California for prescribing controlled substances for the treatment of pain. Tr. 113–14; GX 6. There is a serious increase in risk and potential death when combining opiates and benzodiazepines, and a doctor should try to avoid this combination whenever possible whether he is a primary care physician or a pain specialist. Tr. 114–15; GX 6.

In general, pain patients may not take their pain medications as prescribed, but the pain contract dictates how patients should take their medication. If they are not taking them as prescribed, the provider needs to discuss the resulting risks with them. Tr. 411.

A fast metabolizer is a patient whose body may metabolize a certain medication faster than others so it may potentially not remain in the patient's system as long as it might in someone else's. Tr. 310.[11] This would require dosages to be divided more throughout the day, using the same quantity of the drug, but dividing the doses more frequently throughout the day. The standard of care for such patients requires documentation specifically identifying that a fast metabolism is the reason for any aberrant drug screens, because there are many possibilities why a urine drug screen can be negative. Tr. 310–11. A doctor has several options when resolving aberrant drug screens including actually querying the patient, doing random pill counts, doing more randomized drug screens, and recording the last time a medication was taken. Tr. 312. As to all the patients, there is no evidence in the record that the Respondent took any of these approaches. Tr. 312–13. Although the Respondent may have discussed the risks of combining benzodiazepines and opiates, there was no informed consent in the record. Tr. 415–17.

General Patient Discussion

According to Dr. Munzing, a legacy patient is a patient that comes from another provider or a patient whom a doctor has been following for quite some time who comes in for a certain treatment. Tr. 325–26. It could be within the standard of care to keep a patient on the medications he was prescribed by a previous provider if the current doctor has done an appropriate, independent evaluation and concludes that what was previously prescribed is reasonable, indicated, and medically justified. Tr. 326–28.

Vitals should be taken during each and every visit when patients are on a very high dose of opioids because they are at a greater risk. This is true even if the visits are one day after each other because patients vary day-by-day. Tr. 331–32. Despite the fact that there are no written guidelines that require this, Tr. 338–39, Dr. Munzing based his opinion on discussions with providers who focus on pain management and other specialties, as well as on information obtained at trainings and lectures. There is no maximum MME because a doctor needs to make prescribing decisions within context of each individual patient; prescribing could be a little bit higher than 90 MME depending on the patient. Tr. 332–33.

Dr. Munzing stated that he is ''here to help protect patients [by] . . . looking at the standard of care, looking at the dosage of medications, looking at the areas of informed consent, of aberrant urine drug tests, or documentation. . . .'' Tr. 341.

According to Dr. Munzing, when a patient reports that his pain is staying at a five on a scale of one-to-ten, that does not necessarily indicate that the treatment plan is working. The provider must look at the complete context of that patient and look at the risk and potential benefits. Tr. 354. However, if the pain number has come down significantly and the patient's function has significantly improved, then a patient may have stabilized at that

*[E] [Text relocated for clarity.] Dr. Munzing noted there is a condition called Opioid-Induced Hyperalgesia, where higher doses of opioid medications may increase pain rather than decrease pain or may increase a patient's sensitivity to pain. Tr. 109.

[10] Dr. Munzing noted that the CDC guideline was primarily for primary care physicians so his opinion in this proceeding did not completely rely on a strict adherence to the CDC guidelines. Tr. 110–11, 334; GX 5. Furthermore, the CDC guidelines are simply guidelines and not absolute mandates. Tr. 111.

[11] Dr. Munzing noted that such patients are relatively rare. Tr. 313–14.

dosage. Tr. 355. One or more of the patients' records infrequently mentioned that their activities of daily living and their ability to function on a daily level was pretty good for them, which could be seen as a potential benefit of the treatment. But this does not necessarily mean that the patient is on the right dosage and the provider still needs to assess the potential risk. Tr. 355–56. A doctor also needs to review where a patient was before prescribing and where he is now, and whether there is potential for continued improvement while simultaneously trying to mitigate the risk. Tr. 356–57.

It is typical for pain to fluctuate in chronic pain patients who have good days and bad days; but patients who are reporting pain at a seven or eight, after having initially reported pain at an eight or a nine, have only minimally changed. This scenario would not be considered a success because this is only a slight improvement at the cost of a significant risk. Tr. 358–59.

If one does not document something and there is no way to verify it, then you cannot infer that it has happened. Tr. 406. Although there may be ways to secondarily find that something was done; [for example, if a physician says they ordered imaging but did not document the imaging, imaging results in the medical record could verify that the imaging was ordered.] *Id.* However, the State of California has stated that a doctor not only needs to prescribe Narcan or Naloxone, but also needs to educate the patient, and both need to be documented. Tr. 407. [Accordingly, Dr. Munzing could not infer that a patient was educated regarding Narcan based solely on the fact that the patient received a Narcan prescription. Tr. 405.]

Dr. Munzing was provided materials to review relating to the Respondent's prescribing of controlled substances including medical records and CURES information for six patients that spanned approximately three-and-half-years. Tr. 116–17, 385–87.[12] He may have spent approximately fifty-to-sixty hours reviewing these records prior to providing his opinion to the DI. Tr. 342. He concluded that the prescribing for two of the patients he was initially presented with was consistent with the standard of care. Tr. 116. He did conclude, however, that the controlled substances prescribed to J.K., D.P., P.S., and D.L. were not medically justified as prescribed, and were beneath the standard of care in California and outside the usual course of professional medical practice as prescribed. Tr. 117.

Overall, Dr. Munzing generally reached this conclusion based on several factors, including the high morphine milligram equivalent, with one patient's prescriptions being as high as 6,000 MMEs, which is the highest he has ever seen. Tr. 117–18. The patient histories were also limited with little to no mental health history and the use or aberrant use of drugs and alcohol was typically not listed in significant detail. Tr. 118. The examination was absent from the medical records; examinations were sometimes performed fifty-percent of the time and sometimes less. Two or more vital signs were not frequently obtained, oftentimes less than fifty-percent of the time. Tr. 118–19. Urine screens were typically ordered for patients on the first visit and were done as many as two or three times per month, using much more costly confirmatory tests. Tr. 119, 359–60. Furthermore, urine drug tests for three of the four patients had aberrant or even inconsistent values. Resolution of those aberrancies were not typically documented in the medical records, yet the Respondent continued to prescribe the medications. There were a whole host of things that were concerning, including patients continuing on very high dosages of medications and three of the four patients actually had their dosage increased over time. After reviewing the records, Dr. Munzing did believe that all four patients were likely in pain and were not ''tricking or faking their pain.'' Tr. 120, 419.

Dr. Munzing further noted that some of the patients received Narcan or some other form of opioid reversal medication. Dr. Munzing noted that it was possible that the Respondent had a discussion with his patients regarding why the Narcan was being given—that a person could overdose from being prescribed certain medications and this opioid reversal medication could prevent them from dying. Tr. 364–65. However there is no evidence in the records that this was discussed. Tr. 366–67. J.K., D.L., and P.S. had a number of aberrant drug screens. Tr. 309–10. Overall, it was within the standard of care for the Respondent to attempt to pursue a treatment plan with these patients after verifying the pain in some way through studies, etc. Tr. 419–20.

The Respondent reported he tried alternative methods to opioids, including prescribing gabapentin or neuropathic medication, electrical analgesia, and injections, which Dr. Munzing said were reasonable for the Respondent to pursue at the time. Tr. 351–52. With most, if not all of the four patients, the Respondent either ordered tests or attempted to order tests, and on occasion he made efforts to refer patients to specialists. Tr. 353. Dr. Munzing agreed that this is not a case of a doctor just giving patients pills to control their pain. Tr. 353–54.

Patient D.P.

A Controlled Substance Agreement is separate from an informed consent. An informed consent may be added to a Controlled Substance Agreement. Tr. 120–21.; GX 8 at 239. The Controlled Substance Prescription Agreement for Patient D.P., dated April 5, 2017, is adequate as a controlled substances prescription agreement, but is not adequate as an informed consent because it does not lay out for the patient that he/she is at a much higher risk of addiction, overdose, and death. Tr. 121–22, 458. This missing information and lack of informed consent contributed to Dr. Munzing's opinion that the opioid prescriptions were outside the usual course of professional practice. Tr. 122–23.

D.P. was a complex patient. Tr. 321. As to D.P.'s medical record regarding evaluation and monitoring, the medical record shows frequent, expensive urine tests occurring approximately three times a month; this was unnecessary because the patient was fairly consistent in showing that he was taking the prescribed medication. Tr. 123. As discussed previously, doing testing more often than required is not necessarily a good thing and does not mean that a doctor is exceeding the standard of care. Based on CURES, D.P. was receiving an exceedingly high MME dose and high number of pills (approximately 160 tablets per day) over long periods of time that were refilled on a weekly basis. Tr. 123–24. Dr. Munzing has never seen a patient get anywhere near that number of tablets per day. Tr. 123. Over the course of three years, the patient's prescriptions ''bounce[d] up and down,'' between approximately 3,500 to 6,000 MME. Tr. 124, 428. D.P. was receiving somewhere around 1.4 million milligram dosage units per year, sometimes higher than that, which was the highest Dr. Munzing has ever seen. Tr. 119–20.

D.P. then appeared to receive treatment at Pain Management, UC San Diego where the amount dropped to 2,700 MME and the patient was then in and out of the hospital for very serious medical problems unrelated to the pain including a heart attack and kidney

[12] When questioned on cross examination, Dr. Munzing stated that if it appeared that he received insufficient records, he could ask the DEA whether there are additional records available. Tr. 325. He also explained that for the patients not discussed at this hearing, he had done a high level analysis of the CURES report data and did not notify the DEA that he had concerns about patient safety regarding the other patients based on what the DEA had asked him to review. Tr. 388–90.

failure. He began working with other pain management providers and was taken down to 1,000 MME and tapered down. Tr. 124. He was most recently in the 700 range and was continuing to taper down.* [F]

Overall, the Respondent's documentation for D.P. was ''pretty poor'' without additional information, it did not reflect adequate attempts to mitigate symptoms or risk over time and did not meet the standard of care. Tr. 125. Furthermore, the medical records show that vital signs were taken at fewer than fifteen-to-twenty percent of the total visits. Tr. 125, 137. Many of the visits lack documented vital signs and a musculoskeletal exam, which is outside the standard of care in California for a doctor who is managing patients at incredibly high dosages. Furthermore, Dr. Munzing opined, the documentation was far below what was necessary and did not justify the incredibly high dosing. Tr. 126.

Comparing the documentation from the Respondent to UC San Diego, it was like ''night and day'' and D.P.'s pain score was not ''all that different'' despite the fact that D.P. went down from 6,000 to 1,000 MME. Tr. 126–27. The Respondent's records do not reflect that D.P.'s pain scores and functional level improved when he was on the highest dosages of opiates, which Dr. Munzing would expect to see. Tr. 127. There is a ''great difference'' between the Respondent's records and those provided by UC San Diego and the other pain management group. The Respondent did not provide records of treatment prior to him establishing care with D.P., which is ''vitally important'' as it relates to the standard of care. Tr. 127–28.

There were four prescriptions written by Respondent for D.P. on April 18, 2017, to be filled on April 26, 2017; all were for Oxycodone but in four different strengths. Tr. 129; GX 9 at 2. Between the four prescriptions D.P. was prescribed 160 tablets of Oxycodone per day. Tr. 130. Dr. Munzing calculated that the MME for one of the prescriptions alone was 1,200 MME. For all four Oxycodone prescriptions, the total MME was 4,500, which is astronomical and the highest dosage Dr. Munzing has reviewed, including his review of approximately 150 overdose deaths. Tr. 132, 135. There are also medical records dated April 12, 2017, that provide only a minimal level of investigation, with no vital signs or examination listed; therein Respondent prescribed additional medication, despite there being no justification to do so. Tr. 132–34; GX 8; 246–253. On April 19, 2017, Respondent wrote four prescriptions identical to the four written on April 18, 2017, to be filled on April 19, 2017. GX 9, at 3. It is highly unusual that these two prescriptions were issued to be filled only one week apart, but the Respondent repeatedly prescribes medications over long periods of time on a weekly basis. Tr. 134–35. Dr. Munzing had the same issues with the prescriptions issued on April 19, 2017, and found that they were not issued in the usual course of professional practice or for a legitimate medical purpose. Tr. 135. The Respondent continuously prescribed a combination of 280 tablets of oxycodone 10 milligram, 180 tablets of oxycodone 15 milligram, 280 tablets of oxycodone 20 milligram, and 280 tablets of oxycodone 30 milligram between March 17, 2017, and January 3, 2018. Tr. 136. Rather than tapering, as required by the standard of care, D.P.'s records shows that Respondent periodically added a prescription for oxymorphone, so episodically the MMEs went from 4,500 to 5,100 as the Respondent increased D.P.'s dosage. Tr. 136–37. [Dr. Munzing said that there was no justification in the record for the oxymorphone prescriptions and they were also outside the standard of care. Tr. 137.]

Furthermore, vital signs were taken infrequently, which puts a patient at a high risk; checking blood pressure is important to ensure the blood pressure is not too low or too high, and checking the respiratory rate is important because the medications are respiratory depressants. Tr. 137–38. Furthermore, on July 3, 2017, the Respondent added Opana as an additional opioid prescription that is long-acting, which increases the MME and therefore the risk to the patient. Tr. 139; GX 8 at 372. Any added benefit of this prescription would be minimal as D.P. was already on an astronomically high dose and there was no documented reason why this was added as a prescription. Tr. 140–41. Furthermore, D.P.'s pain level was listed as a ''5,'' which would have made this a great opportunity to start reducing the pain medication. Tr. 141–42. Overall, the Respondent failed to provide adequate justification for why D.P. was prescribed such a high level of MME.[13] Tr. 142

Dr. Munzing continued to review the Government's exhibits and explained how each prescription did not meet the standard of care for patient D.P. Tr. 142–177. [Dr. Munzing opined that each of the relevant prescriptions to D.P. were issued outside the usual course of professional practice and without a legitimate medical purpose. Tr. 146–47, 149, 151–52, 154, 157, 159, 161, 177. He testified in support of that opinion that: Vital signs were not taken and physical examinations were not performed, Tr. 145, 148, 150, 153; the MME bounced up and down but was always ''in the [high] stratosphere'' without obtaining informed consent or informing the patient of the risks, Tr. 145, 158–59, 163, 171; and there was no plan for tapering medications or assessing withdrawal when the dosages decreased, and there was insufficient justification in the record when the dosages increased. Tr. 146, 148, 150, 152, 156, 172. Dr. Munzing also noted that there is a gap in the medical records between June 25, 2019, and September 30, 2019, but that prescribing continued during that time. He testified, ''these are astronomically high levels [of controlled substances] and it's certainly not based on sufficient justification, not usual professional practice, and now there's a big gap, but the prescribing continued. So I have very significant concerns about that . . . [and the patient] ended up being admitted to the hospital on multiple occasions and multiple ER visits, starting in late 2019 and going through the early parts of 2020.'' Tr. 162–63.]

It appears that D.P. went to a detox facility in September 2019, and his MME was decreased to 60 or 65; there was some discussion in a note from the Respondent that he would not prescribe above 90 MME per day going forward. Tr. 164, 433–34. Dr. Munzing clarified that the detox process (which was not performed by Respondent) was not particularly relevant to his case or his opinions regarding Respondent. Tr. 164.

[Summarizing his opinion of Respondent's prescribing to D.P., Dr. Munzing testified that each of the prescriptions captured in the stipulations were issued without a legitimate medical purpose and were outside the usual course of professional practice. Tr. 177. Dr. Munzing further testified that the prescribing ''was incredibly dangerous. The patient is lucky to be alive. It certainly was not [within the] standard of care. The way he prescribed the dosages, the MMEs, were certainly not medically justified and not usual professional practice.'' Tr. 176.]

*[F] The Government seems to have offered this evidence as an example of what prescribing and documenting within the standard of care for D.P. could have looked like. However, this information is not material to my decision. I also note that I am not holding Respondent accountable for any actions other than his own.

[13] [Footnote text moved to the body of the decision.]

Patient P.S.

In reviewing P.S.'s file, Dr. Munzing did not find any documented discussion regarding the specific risks of opioids, including addiction, overdose, or death, and opined that the lack of documentation violated the standard of care. Tr. 178; *but see,* Tr. 390–91 (a note relating to a visit from January 25, 2018, stating generally that the Respondent discussed the risks with P.S. regarding the use of opiates and benzodiazepines and mentions respiratory distress).

On almost every occasion during the relevant period, P.S. was prescribed an opioid and a benzodiazepine, a combination that falls under the FDA warning. Tr. 177–78. Dr. Munzing explained that, curiously, a progress note dated January 9, 2017, mentions that on May 31, 2019, R.R–G. ''discussed that benzodiazepines should not be taken concomitantly with pain medications due to an increased risk of respiratory depression.'' Tr. 179. The patient was reportedly advised ''not to take both prescriptions at the same time,'' and there was a plan to taper down alprazolam or Xanax.'' *Id.* Tr. 179; GX 10 at 4. This warning was repeated word for word on several occasions going into the future, but the patient was not really tapered down. Tr. 181. Patient P.S. was switched from 1 milligram of lorazepam to half a milligram of alprazolam; this is not considered a dramatic tapering, and there is no documentation stating why this medication change was made. Tr. 179–81, 193. Furthermore, comparing the two prescriptions is like comparing apples and oranges as there is no definitive data that supports or refutes whether one is more or less risky than the other. Tr. 371–72. Although the patient notes demonstrate that ''R.R–G.'' [14] had a discussion with the patient regarding respiratory depression, Dr. Munzing opined that the records did not adequately document informed consent because there is no indication that anyone discussed the specific risks of addiction, overdose, and death. Tr. 182; GX 10. The questionable date of the entry, and the lack of documentation regarding informed consent contributes to Dr. Munzing's opinion that those prescriptions to P.S. were issued outside the usual course of professional practice.*[G] Tr. 183, 374.

According to Dr. Munzing, the Respondent only took vital signs approximately fifty-percent of the time and failed to perform proper musculoskeletal exams. Tr. 183. The records also fail to provide an adequate history of the patient's anxiety or evidence that alternative methods of treatment such as non-controlled substances were considered. Tr. 183–84. There were also no prior medical records in the file and no documented attempt to get them. These failures contribute to Dr. Munzing's opinion that the prescriptions to P.S. at issue did not meet the standard of care. Tr. 184. [Dr. Munzing testified that the ''MMEs are fairly consistent [throughout,] in the mid-300 range,'' but the patient did not seem to be getting sufficient pain relief to justify the risk of ''the high MME and the combination with benzodiazepines.'' Tr. 185.]

Dr. Munzing testified that Respondent attempted alternative treatments for P.S. At one point, the Respondent prescribed testosterone to P.S. to help treat the side-effects of opioids, and the patient reported feeling better after receiving the testosterone. Tr. 360–61. Dr. Munzing recalled one of the patients was prescribed a Medrol dose pack, but could not recall if this was for Patient P.S. Tr. 361. At some point in time, Patient P.S. was given injections in the facet joint to help control the pain. Tr. 362–63. The Respondent also attempted to have P.S. see a psychiatrist or psychologist [15] to help with his chronic anxiety problem, which is a reasonable thing for a doctor to do if he is not qualified or competent to deal with that. Tr. 396.

Patient P.S. was prescribed five medications, four of which were controlled substances: Morphine sulfate extended release 30 milligrams three pills a day, morphine sulfate extended release 60 milligrams three pills per day, Dilaudid (hydromorphone), and lorazepam (a benzodiazepine) which is a total MME of 366 (not including the benzodiazepine). Tr. 185–187; GX 11. Dr. Munzing testified that the MME was very high. Tr. 187. Furthermore, Dr. Munzing testified, [''we also have the opioid and the benzodiazepine that both the CDC and the FDA warn against'' prescribing together. Tr. 187.] Dr. Munzing testified that these prescriptions were not issued in the usual course of professional practice or for a legitimate medical purpose. Tr. 189. Dr. Munzing opined that the note for February 17, 2017, was deficient because there is a pop-up warning ''from the future, from May 31, 2019,'' [16] it did not note alcohol use, and it did not provide a record of an exam being performed despite the patient being prescribed a high dosage of medication and receiving a benzodiazepine, without a diagnosis to justify it. Tr. 187–88. This patient also has significant medical problems, including history of an acute embolism and thrombosis or deep vein thrombosis (DVT), which puts him at an increased risk. Tr. 188–89. Dr. Munzing opined that the opioid prescriptions were not written in the usual course of professional practice or for a legitimate medical purpose because the dosages are high, there are dangerous combinations, there is no informed consent, the exam was deficient, and the documentation had ''a whole multitude of parts that were necessary that were missing.'' Tr. 189.

Overall, Dr. Munzing's review of all of P.S.'s medical records indicated there was no proper justification documented for the ''very high'' and ''dangerous'' dosage of opioids nor the benzodiazepines that were prescribed to P.S., and they therefore were not issued in the usual course of professional practice or for a legitimate medical purpose. Tr. 190–97. [Dr. Munzing testified that the prescribing was ''not appropriate, this is very high, this is dangerous.'' Tr. 191. Specifically, he testified ''[t]here's no informed consent. The exam is missing on the area [Respondent was] treating. And we don't know really anything about the anxiety that reportedly the Xanax is coming from. . . . [This] patient still is put at significant risk and still the documentation is poor.'' *Id.* Dr. Munzing also testified that there was never justification in the medical record for the benzodiazepine prescriptions. Tr. 193.]

Patient P.S. had urine drug screens dated March 17, 2017,[17] April 14, 2017, June 19, 2017, August 7, 2017, September 12, 2017, October 10, 2017, November 3, 2017, September 11, 2018, October 3, 2018, December 21, 2018, and March 26, 2019. Tr. 195–225; GX 10. All of these drug screens showed

[14] The Tribunal later learned that this is the Respondent's nurse practitioner. The Respondent is responsible for his mid-level and lower-level employees. Tr. 220–21, 272. On cross examination, Dr. Munzing elaborated that in California, nurse practitioners are able to see patients, but the Respondent would still be responsible for the overall management of the patient as he continued with the patient's care. Tr. 350–51.

*[G] Text omitted for clarity.

[15] Dr. Munzing acknowledged that the Respondent had some challenges getting a psychiatrist or psychology to actually see the patient. Tr. 366–97; GX 10 at 1238–44.

[16] On cross examination Dr. Munzing said it could be possible that this print out may include errors. Tr. 346, 347. However, Dr. Munzing also stated that in his work as an expert, he does not recall ever seeing an issue with an EMR that resulted in a case printing things from the future. Tr. 348–49.

[17] The Respondent documented that there was no aberrant drug screen on this day. Tr. 198.

that Patient P.S. was negative for either lorazepam or alprazolam,[18] an aberrancy, and the later drug screens showed that P.S. was negative for morphine, another aberrancy. Tr. 195–97; GX 10 at 76. Some of the drugs screens also showed alcohol use, [which Dr. Munzing testified ''increases the risk to the patient of certainly overdose and overdose death.'' Tr. 217.] According to the standard of care, the Respondent should have contacted the patient within a couple of days of receiving these aberrant drug screens to have the patient explain why he was not taking his prescribed medication or why he consumed alcohol. Tr. 198–99. There is no indication that the Respondent documented that he questioned the patient nor that the Respondent resolved these aberrant drug screens. Tr. 199–202.*H

Despite all of these aberrant results (including P.S.'s evident alcohol use), there were no attempts for the Respondent to either address or resolve these issues with documentation in the medical record, which contributed to Dr. Munzing's opinion that the prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. [According to Dr. Munzing, following the aberrant drug screens, Respondent needed to explore the reason for the inconsistent result and resolve that reason ''before continu[ing] to prescribe.'' Tr. 213.] There are several potential dangers posed by these aberrant drug screens, including that the patient is not taking medication some days and taking extra other days, is hoarding the medication, or is illegally diverting the medication. Tr. 199, 211. [Dr. Munzing testified that the inconsistent drug screens and failure to document a resolution contributed to his opinion that the prescriptions issued to P.S. were outside the usual course of professional practice and not for a legitimate medical purpose. Tr. 201–04, 211.]

Ultimately, Dr. Munzing found that the prescriptions prescribed to P.S., which were stipulated to by the parties and listed in the Government's Prehearing Statement, were far outside the standard of care, were not medically justified, and were outside the usual course of professional medical practice. Tr. 225; GX 4.[19] *I

Patient J.K.

Dr. Munzing testified that the standard of care for patients with chronic migraine headaches, or chronic headaches in general, [such as those for which Respondent was treating J.K.], requires that a provider take an appropriate history and examination, including a neurological examination, in order to narrow down what type of a headache the patient has and rule out certain causes such as a tumor or infection. Tr. 229. If the headaches become more severe, the provider typically does an imaging scan such a CT scan or an MRI to ensure there is no tumor. Tr. 229–30. The medical records for J.K. do not meet the standard of care because there is no detailed history, no detailed exam, and no evidence of imaging studies, yet the Respondent prescribed opioids, which is not generally a successful treatment for chronic headaches, especially migraine headaches. Tr. 230–31; GX 12.

[Dr. Munzing opined that Respondent did not meet the standard of care for evaluating and monitoring J.K. Tr. 232.] The Respondent's documentation of J.K.'s medical records did not establish that Respondent met the standard of care because there was no comprehensive history regarding mental health issues or prior alcohol or drug use: there were no prior medical records; there were multiple unresolved aberrant drugs screens; and vital signs were not taken at every visit. Tr. 232–33. There was also limited, vague documentation regarding the patient's cancer diagnosis with no information regarding oncology doctors, chemotherapy, or treatment for cancer pain. Tr. 233–34. Overall, the medical history done for J.K. did not justify the high dosage of medications that the Respondent prescribed to her. Tr. 234. The standard of care would require a detailed medical history and past medication history, specifically discussing the patient's breast cancer, and a history regarding the patient's headaches in general, including any treatments that had been attempted as well as consultations with other doctors. Tr. 234–35. [According to Dr. Munzing, each of these elements was missing. *Id.*] The Respondent also failed to adequately document the risks and attempts to moderate the risks, and there is no evidence of informed consent in the file. Tr. 235, 446, 448, 458.

The Respondent issued controlled substance prescriptions to J.K. on November 28, 2016, which included: (1) Fentanyl patch,[20] 75 micrograms ever hour to change every four hours; (2) Percocet 10 milligrams, 180 for 30 days, 6 per day; (3) Soma, a muscle relaxant; and (4) Nuvigil, which is a stimulant. Tr. 235–236; GX 13. The combination of the Percocet and fentanyl patch equals 360 MME. Tr. 237. [Dr. Munzing testified that Soma ''is a respiratory depressant . . . [and it is] fairly habit forming or addicting. . . . [I]t is part of a dangerous triad; an opioid, Soma and a benzodiazepine is referred to . . . as the trinity or the holy trinity.''] Tr. 238. In fact, many organizations stopped prescribing Soma ten years ago. Tr. 238–39. The patient's pain level of four out of ten would not justify a higher level of opioids and in fact, the standard of care would dictate trying other modalities prior to prescribing opioids. Tr. 239–40; GX 13.

[The combination of fentanyl and Percocet was prescribed a number of occasions, but] there was no justification as to why J.K. was prescribed this combination or the very high doses, and therefore these prescriptions were not issued in the usual course of professional practice or for a legitimate medical purpose. Tr. 240–41. [Dr. Munzing opined that every time Respondent prescribed a combination of fentanyl and Percocet to J.K., it was outside the usual course of professional practice. Tr. 241.] On January 29, 2017, the Respondent prescribed medications to J.K. that equaled 405 MME, without justification provided in the medical records, and outside the usual course of medical practice and without a legitimate medical purpose. Tr. 242–44; GX 13. On August 18, 2017, the Respondent changed J.K.'s prescription by switching the fentanyl patch and added OxyContin and oxymorphone ER, which would be 450 MME. Tr. 244. J.K.'s opioid prescriptions were therefore being increased without any justification for doing so documented in the medical records [and without trying

[18] [Omitted for clarity.]

*H Omitted repetitive text for brevity.

[19] On cross examination, the Respondent's counsel referred Dr. Munzing to a note regarding P.S. seeking an early refill due to leaving his paper prescription in a Lyft and Dr. Munzing confirmed that the Respondent's note on this date indicated that he was ''doing something to explore'' the claim. Tr. 391–95.

*I Dr. Munzing testified that ''all four of the patients certainly have the likelihood of known pain generators.'' Tr. 226. But he made clear in his testimony that having a source of pain alone, without complying with the steps required by the standard of care, was insufficient to justify prescribing controlled substances. Tr. 226–27.

[20] A fentanyl patch is like a large band aid that works by absorbing through the skin over a period of time, and is really meant to be prescribed on a 3-day basis because when it is used every two days, the MME calculation is higher, but it is a long-acting opioid. Tr. 236–37. Sometimes a patient can have difficulty using the fentanyl patch and in this instance there are several ways to help keep it stuck in the skin, and if they are not successful, the doctor should stop prescribing the patch and instead prescribe oral medication. Tr. 237–38, 452–53.

other treatment options,] which violates the standard of care. Tr. 245. The prescriptions were therefore not issued in the usual course of professional practice or for a legitimate medical purpose. Tr. 244–47.

On November 10, 2017, J.K. had an office visit; the record stated that her pain level was 4 and that the Respondent would continue prescribing her current medications, making these prescriptions outside the usual course of professional practice and not for a legitimate medical purpose. Tr. 247–48. Patient J.K. had another visit on January 8, 2018, but there were no documented vital signs and there was nothing written under the objective assessment plan, which violates the standard of care; therefore, the prescriptions issued at this time were not issued in the usual course of professional practice or for legitimate medical purpose. Tr. 248–49. On February 9, 2018, the Respondent replaced OxyContin with oxycodone without any justification for doing so documented in the patient record,[21] which does not meet the standard of care. The prescriptions were not issued in the usual course of professional practice or for a legitimate medical purpose. Tr. 249–55. GX 13. On October 16, 2018, the prescriptions totaled 330 MME and there was no justification for providing these prescriptions documented in the record. Tr. 255–56; GX 13. Furthermore, there was a note in the record that J.K. was taking leftover pain medication, which means that she was not following the directions of the Respondent and may be receiving a higher dosage than she needed. Such prescribing is contrary to the standard of care. Tr. 256–57.

There is also a note in the file from an incident that occurred on October 12, 2018, when J.K. called the office and stated that she was unsure if she would be alive tomorrow and ''she [is] going to drive off the road due to not getting [her] prescription.'' Tr. 258. Dr. Munzing noted that this was a very alarming note and that to a reasonable person, this would indicate that J.K. was suicidal. Tr. 258. The standard of care for a doctor with a patient who is on high opioids and has suicidal ideations is to get that patient immediate care, look into the patient's mental health history, work with other providers such as a psychiatrist, and come up with a plan. Tr. 259. Typically, a doctor would not continue the medications being prescribed and would work to develop a possible management plan for the patient. The standard of care would also require that the doctor have a discussion with the patient on a subsequent visit, [but Respondent did not.] Tr. 259–60. The October 16, 2018, prescription was therefore written outside the usual course of professional practice and was not for a legitimate medical purpose. [Dr. Munzing explained that it was ''dangerous'' to continue to prescribe opioids in this manner for a patient with suicidal ideation. Tr. 260. ''You may give a three-day dosage or something, recognizing that if this person is suicidal you may be providing them the wherewithal and the means to do it.'' *Id.*]

J.K. also had inconsistent urine drug screens on April 27, 2017, February 9, 2018, March 19, 2018, June 4, 2018, and July 31, 2018, which showed the presence of THC, or marijuana, and amphetamine. Tr. 261, 263, 270. This is problematic because it was not a prescribed medication, and taking marijuana, even if it were legally prescribed, while on a high dosage of opioids adds a risk to the patient. Tr. 262–63. J.K. also tested positive for amphetamine, which is a stimulant and can be addictive and dangerous. Tr. 263–64. There is no indication that this was part of J.K.'s management plan with the Respondent, and even if the amphetamine was prescribed by another doctor, it should be very clearly documented in the medical records along with informed consent. Neither controlled substance was in J.K.'s medical records. Tr. 264–66.[22] J.K. tested positive for amphetamines again on May 12, 2017, and September 15, 2017. Tr. Tr. 267; 269; 270; GX 13. There is no indication in the record that the Respondent discussed any of these aberrant drug screens with J.K. at subsequent office visits. [Dr. Munzing opined that there was no evidence that Respondent addressed J.K.'s inconsistent drug screen results at all. Tr. 267.] There was some indication that Respondent's nurse practitioner had discussions with J.K. regarding risks on March 7, 2018,[23] and March 21, 2018,[24] [but Dr. Munzing testified that those discussions, as documented, were insufficient to satisfy the requirement for obtaining informed consent.] Tr. 266–67; 268–69; 270; 279. This contributes to Dr. Munzing's opinion that the prescriptions written for J.K. were outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 266–67; 268–69; 270; 279.[25]

Dr. Munzing reviewed the medical records that pertained to the treatment of J.K.'s breast cancer, including records from her oncologist. Tr. 279. Reviewing these records informed Dr. Munzing's opinion that J.K. had been cancer-free for at least four years, so the Respondent was not prescribing opioids to J.K. for end stage cancer.[*J] Tr. 279–81. Overall, Dr. Munzing opined that each of the relevant prescriptions to J.K. were issued outside the standard of care in a ''multitude of standard of care elements that should have been done and weren't done,'' were not medically justified as prescribed, and were not within the usual course of professional practice, and they put the patient at a higher risk. Tr. 281.

Patient D.L.

D.L. is a patient who is in her late 60's/early 70's. Tr. 287. Overall, Dr.

[21] The Respondent's counsel objected to this questioning and noted that it was a nurse practitioner who met with J.K. regarding the prescriptions for February 9, 2018, and not the Respondent. Tr. 252. The Government clarified with Dr. Munzing that the Respondent should have been aware of these prescriptions that went out under Respondent's name. Tr. 252–53.

[22] On cross examination, Dr. Munzing stated that although he believed that J.K. was seeing a psychiatrist, who was prescribing Adderall and a benzodiazepine, these medications were not listed on the medication list and therefore the medications showing up in the urine screen were not consistent with what the medical records were documenting. Tr. 440–41. However, upon further pressing from counsel he agreed that the test would not be inconsistent if the patient was taking everything in its entirety, but that it would need to be documented. Tr. 442.

[23] On cross examination, the Respondent questioned Dr. Munzing about a note from the March 7, 2018 visit with Nurse Practitioner Pasco that mentioned a ''discussion'' and later stated ''patient understandable'' and Dr. Munzing stated that it could have referred to describing the risks of combining benzodiazepine and opioid together and in fact was more likely there was a discussion that there is a risk of those medication categories. Tr. 362–64, 67–68.

[24] On cross examination, the Respondent questioned Dr. Munzing about a note from the nurse practitioner from March 21, 2018, stating ''discussed risk of respiratory depression with concurrent opioid and benzodiazepine use . . . patient verbalized understanding'', which Dr. Munzing stated appears to seem that the nurse practitioner talked about the risk of respiratory depression from P.S.'s combined medications. Tr. 372–73. [But, Dr. Munzing made clear that there were other risks that did not have a documented discussion and that, overall, the discussion of risks was insufficient to meet the standard of care for informed consent. Tr. 374–75.]

[25] On cross examination, the Respondent questioned Dr. Munzing about a visit with the Respondent and the note mentioned ''discussed to patient current CDC guideline and the need to decrease his opiate dose, his current morphine equivalent is 366 milligrams per day,'' which likely means there was a general discussion that the Respondent mentioned the CDC guidelines say 90 MME, and the patient is currently at 366 MME. Tr. 375–76; GX 10 at 544, 550. Dr. Munzing had no objection to the statement in the note itself, [text omitted for clarity] but noted that whether it meets the requirement for informed consent is a different question. Tr. 377.

[*J] Dr. Munzing testified that the standard of care when prescribing for end stage cancer is different. Tr. 281.

Munzing's review of D.L.'s medical records indicated that the evaluation and monitoring the Respondent did for D.L. did not meet the standard of care, and the opioid prescriptions issued to D.L. were not medically justified nor issued in the usual customary medical practice in the State of California. Tr. 282–83. [The medical history was ''cursory . . . and lack[ed] detail.'' Tr. 282.] Furthermore, the Respondent did not [attempt to obtain] prior medical records, which was mandated by the standard of care. Tr. 283.

The Respondent prescribed D.L. lorazepam, Percocet, morphine sulfate, and oxymorphone, with an initial MME of 455.[26] Tr. 283–86; 288; GX 14; 15. D.L. was also prescribed Lunesta, a sleeping agent and respiratory depressant that has the potential risk of habit-forming addiction as well as the increase the risk of overdose when prescribed in combination with opioids. Tr. 286. Furthermore, adding a sleeping medication increases the risk, especially when taking into account D.L.'s age. Tr. 286–87. [Dr. Munzing testified that over the three-year period of treatment, the ''extremely high dose medications'' did not ''show that there was significant improvement'' in the pain level. Tr. 289.] There was no justification for prescribing a benzodiazepine (lorazepam) and a sleeping agent, and there was no informed consent. Furthermore, at a visit on May 31, 2018, the Respondent wrote a note indicating that Percocet would be decreased; but in reality, the Respondent increased the Percocet prescription. 295–96; GX 15 at 445. The record also indicated that D.L. had been consulted regarding her MME of 410, which was above the recommended 90 MME dosage by the CDC guidelines, and that the patient would be seen once a week until decreased. Tr. 297. Although the MME was mildly decreased over time, there was no evidence that the MME was significantly decreased and it remained at a dosage well above 90 MME. This note/discussion does not meet the standard of care in California and does not serve as an informed consent [because there was no documentation showing that the ''exceedingly high risk of the opioids,'' including ''addiction, overdoses, [and] death,'' were discussed with the patient whose age ''adds to the patient's risk.''] Tr. 297–98. Furthermore, the Respondent did not start tapering the patient down slowly and carefully in order to mitigate the risk, nor did he look at alternative strategies to manage the patient's pain. Tr. 300.

Dr. Munzing found that the relevant prescriptions violated the standard of care and were not issued in the usual course of medical practice or for a legitimate medical purpose. Tr. 287, 290, 292, 294, 299, 301, 308, 309.

D.L. had drug screens on March 23, 2018, (which was negative for oxycodone and lorazepam), April 20, 2018,[27] (which was negative for oxycodone and lorazepam), and January 31, 2019, (which was negative for Percocet and Lunesta). Tr. 302–05. Nothing in the record showed that there was any discussion regarding the aberrant drug screens. Tr. 308. [And as Dr. Munzing opined, a physician ''needs to address [the reason for the inconsistency] and document the resolution if one is going to continue prescribing.'' Tr. 307.]

As to the documented discussion the Respondent had with D.L. regarding using a pain pump, Dr. Munzing testified there was insufficient information to determine whether that was a reasonable alternative because there was not even two full lines of information in the medical record. Specifically, Dr. Munzing testified he could not ''even come close to making that determination.'' Tr. 407–08. On June 2, 2017, it appeared that the Respondent reviewed an X-ray of the hip and left knee and had a discussion regarding hip injections, but there is nothing documenting what the Respondent discovered from the X-rays. Tr. 408–09.

Respondent's Case-in-Chief

The Respondent presented his case-in-chief through the testimony of five witnesses: (1) The Respondent, (2) D.P., (3) Dr. Wiederhold, (4) Dr. Joseph Shurman, and (5) D.L.

Patient D.P.[28]

Patient D.P. met the Respondent after a fall that resulted in five compression fractures and five fractured vertebrae in his back. Tr. 507. He was in extreme pain and had several procedures that did not help him. At one point, he was bedbound and had some pretty dark times lying in bed, sweating through the pain. He saw lots of different doctors, but nothing really happened. At one point his mother recommended her doctor, [not Respondent,] who did not have a ''normal medical office;'' that physician told D.P. that there was no upper limit on pain medicine, and that as long as D.P. was ''breathing [he would] just increase it until [he is] comfortable.'' Tr. 507–08. At every visit he would pay that doctor in cash and that doctor would just ''kind of double the dosage. . . [of] OxyContin.'' Tr. 508. After months of this prescribing, the other doctor ''closed up shop'' and ''went back to Russia.'' *Id.* D.P. was then referred to the Respondent from the ER at Paradise Valley Hospital. In the meantime, D.P.'s primary care physician continued to prescribe the same level of opioids for many months until ''we kind of got things squared away'' and D.P. was able to see the Respondent. Tr. 508–09.

According to D.P., Respondent seemed surprised to learn that D.P. was on such a high dosage and explained to D.P. that opioids can depress breathing, other sensory functions, digestion, libido, and affect pain reception. Tr. 511–13. The Respondent explained that D.P. needed to be brought down [from his high doses] and to be aware of symptoms, such as being tired, indicative of not breathing. Respondent told D.P. that even though D.P. was taking these prescriptions regularly, he could still potentially overdose. Tr. 513, 517. The Respondent gave D.P. a Narcan pack that could be used to reverse the effects of opioids on the body. Tr. 513–15.[29] The Respondent also suggested that D.P. try some other treatments including injections and physical therapy, and said that they would ''work through this.'' Tr. 517–18. Being on the opioids allowed D.P. to work and even volunteer and ''function[ ] like a normal person would.'' Tr. 519. D.P. was reluctant to lower his dosage because he was functioning pretty well and his pain range was between 2 and 4. Tr. 520.

The Respondent had D.P. try injections and SANEXAS therapy,[30] and physical therapy with his home health. Tr. 521, 522. The SANEXAS therapy, which is a unit that sends electrical stimulation to the body through a computer, helped his back relax a little, but did not help with his bone pain. Tr. 521–22.

[26] The Respondent also increased D.L.'s dosage of morphine sulfate on February 23, 2018. Tr. 288–89. There was no justification in the records for this increase to a higher MME.

[27] The visit subsequent to this drug screen, on May 4, 2018, is silent as it pertains to resolving the aberrant drug screen and instead mentions that the patient had no aberrant behavior and none was reported. Tr. 304–05.

[28] The Tribunal ruled that this patient witness could only testify relating to his discussions with the Respondent, his discussions with medical staff at the Respondent's office, treatment received, the regularity of treatment, but nothing relating to the patient's own evaluation of treatment, or efficacy of treatment because such discussion would require medical expertise. Tr. 504.

[29] The Tribunal gave the Government a running objection on leading questions. Tr. 516.

[30] The SANEXAS therapy and injections were done in the Respondent's office. Tr. 526.

D.P. was going to the Respondent's office once every week and usually saw the Respondent, but for some visits he saw a nurse practitioner who would always check to make sure he was breathing well. Tr. 522–24. Usually before seeing the Respondent, a nurse would take his blood pressure and weight, and he would usually do a drug screen. Tr. 525. The Respondent would listen to his heart, listen to him breathe, and feel for where the pain was by ''like push[ing] on [his] back.'' Tr. 525–26. At some point the Respondent explained to D.P. that he would not be able to prescribe to him at the level he was taking, so D.P. tried to go to a detox facility; he was ultimately admitted into Sharp Memorial Hospital and went through detox there. Tr. 528–29. The doctor at that hospital prescribed opioids upon his release. Tr. 529–30. D.P. is currently being treated for pain. Tr. 531.

Patient D.L.

D.L. has been the Respondent's patient for four or five years, maybe longer. Tr. 794. Her primary care physician referred her to the Respondent for her uncontrolled pain. Tr. 795. At that time, she was prescribed Narco or Percocet and lorazepam. The Respondent went into detail with her about the safety of those medications and how the combination could cause respiratory depression, and that she could die or they could lead to addiction. Tr. 797–99, 805. The Respondent also gave her Narcan spray at some point, with prescription refills. Tr. 799–800. The Respondent discussed the importance of taking her medications as prescribed and her son dispenses her prescriptions to her. Tr. 801. She and the Respondent are working to bring her pain medications down and are looking into having an experimental implant in her back to help with the pain. Tr. 802, 806. The Respondent currently prescribes her Percocet, oxycodone, gabapentin, and another medication she could not recall. Tr. 803–04. The nurse practitioners in the office have also discussed the risks and safety issues with her. Tr. 804–05.

Mark Wiederhold, M.D.[31]

Dr. Wiederhold received his Ph.D. in Pathology at the University of Illinois and did a year fellowship in the Special Life Center for Multiple Sclerosis at the University of Chicago. Tr. 578. He started medical school at Rush Medical College and started his internship and residency at the Scripps Clinic in La Jolla; he finished in internal medicine and critical care. Tr. 578. He then took part in clinical trials and research programs, and he spent some years at the Science Applications International Corporation where he worked on national security issues including work with the DEA. Tr. 578–79, 604–05. He is not board certified because he failed the board exam and did not want to take it again. Tr. 579. He also periodically performs locums work, meaning he fills a temporary position within a medical group. Tr. 595, 594.

He has been seeing patients for thirty years. Tr. 577, 605. He has been in private practice for twenty one years at Virtual Reality Medical Center focusing on managing pain with non-narcotic methods[32] for veterans with post-traumatic stress disorder. Tr. 576. He also treats patients with COVID. Tr. 576.

He was on the staff at Scripps for fifteen years doing administrative work on review committees that reviewed charts of other physicians. Tr. 577. At Scripps Clinic, he reviewed patient charts for accuracy and completion, and to ensure that the doctors were meeting protocols. Tr. 579–80. This review included reviewing patients who were treated for chronic pain conditions. Tr. 580, 83.

He was also an expert witness for the State of California in worker's compensation cases, many of which involved chronic pain management. Tr. 577. He said he has testified as an expert witness, but could not recall the name of the court/tribunal. Tr. 583–84. He was an internal medicine physician and ran the intensive care unit for many years; he has treated patients in the emergency room and in the emergent care section, so he has a lot of experience evaluating patients for pain management. Tr. 577–78. [Dr. Wiederhold was qualified in this matter as ''an expert in pain management.'' Tr. 608.]

At the request of the Respondent's counsel's office, Dr. Wiederhold became involved in the instant case and was asked to review medical records and evaluate the quality of care provided to four patients.[33] Tr. 584, 606. He evaluated these patients on three levels: (1) He generally made sure that he understood the types of patients that were being seen and the complexity of the patients; (2) he prepared a number of metrics to make some type of objective record; and (3) he made sure he understood the complexities and difficulties of dealing with the Government-supported healthcare system. Tr. 607.

He confirmed that he drafted reports with Dr. Shurman, and he has worked with him for five or six years in developing new pain programs. Tr. 589. The two of them discussed their findings from reviewing the record and their opinions and thoughts about the management of these patients. He does not currently practice pain management or see pain patients. Tr. 590. Although he previously prescribed controlled substances, he does not currently prescribe controlled substance at the Virtual Reality Medical Center. Tr. 593–94. He agreed that the standard of care requires sufficient documentation in medical records to justify controlled substance prescriptions to patients, which is for the patient's well-being and also protects the doctors. Tr. 595–96. Doctors are also responsible for reviewing their patient's medical records to ensure they are accurate and complete. Tr. 596.

Dr. Shurman[34]

Dr. Shurman attended Temple University for his undergraduate education and then attended Temple Medical. Tr. 612. He then went to Mass General, Harvard's residency in anesthesia and intensive care. Tr. 612, 613. He then worked at the University of Washington for four or five years, where the first model pain center for the country started, and then he came to Scripps as a clinical instructor. Tr. 612–13, 615, 616. He believes that he was one of the first full-time pain specialists in the country. Tr. 616, 639. When he

[31] [The Government objected to the qualification of Dr. Wiederhold as a witness primarily because he was not identified as an expert witness in Respondent's Prehearing Statement. Tr. 596, 604.] The tribunal ultimately found that Dr. Wiederhold's summary in the Respondent's Prehearing Statement dated October 16, 2020, and the summaries filed as exhibits sufficiently described his testimony as an expert. Tr. 596–603. Tr. 603–04, 608.

[32] He is currently working with a company that is developing a subcutaneous Naltrexone implant which can be very important for medication assisted therapy. Tr. 581. He is also working with another company that is looking for a way to objectify levels of pain, which involves looking at electroencephalogram (EEG) and other type of physiological signals to try to match those to identifiable levels of pain.

[33] The Respondent's counsel showed Dr. Wiederhold Respondent Exhibits S, T, U, V and he confirmed that he prepared these exhibits in the course and scope of reviewing the patient records for D.P., D.L., J.K., and P.S. respectively. Tr. 586–88. The tribunal later allowed Dr. Shurman to be recalled to testify that the page numbers listed in the exhibits may not actually correspond to the date in the medical records. Tr. 807–816. The Respondent also offered Exhibit F into evidence and the Tribunal admitted the document into evidence over objection. Tr. 817–18.

[34] The Respondent's counsel posed hypothetical questions to Dr. Shurman throughout this testimony. The Government's counsel noted this on cross-examination and Dr. Shurman admitted that the questions were posed as hypotheticals because the discussions were not documented in the medical records. Tr. 728–29.

moved to San Diego, he joined the Anesthesia Service Medical Group, where he was the Chairman of Pain Management and head of Medical Research. Tr. 617. He has been the Chairman of Pain Management at Scripps Memorial Hospital for many years; he consults for multiple companies primarily in alternative forms of care, he serves as the co-chair for Palliative Care at Scripps, and he is involved in six or seven research projects to try to address the opioid epidemic, addiction, and the use of alternative forms of therapy. Tr. 610–12, 617. He has been the treating physician for approximately twenty to thirty patients in the last three years prescribed with high dose opioids, including patients who have also been prescribed either benzodiazepines, muscle relaxant medications, or other medications. Tr. 632–33, 635, 638–39. He would slowly taper patients off high doses of opioids, and testified that it should be a long-term goal to attempt to gradually taper patients off high-dose opioid use. Tr. 636, 726. In fact, he opined, it can take as long as three years to gradually and safely taper a patient. Tr. 727. In the last ten years, he has prescribed patients over 1,000 MME. Tr. 637.

He has worked with the California Medical Board as a reviewer and expert and has testified in cases involving pain management as an expert witness. Tr. 628–29. The standard of care is what a reasonable pain management specialist would do when treating patients in the San Diego community. Tr. 629, 733–35. He has met with other pain management specialists at conferences and gatherings. Tr. 643. [Dr. Shurman was qualified in this matter as ''an expert in pain management and treatment.'' Tr. 640.]

In 2016, there were no upper MME limits if a doctor had a difficult patient that had multiple surgeries. Tr. 630. The guidelines were more for risk stratification and in 2016, the CDC implemented its guidance regarding 90 MME, which was primarily for family practice doctors. If a patient was prescribed above 90 MME, then the recommendation was for the doctor to refer the patient to a pain specialist. Tr. 630–31.

The standard of care requires that a doctor have complete and accurate documentation of patient treatment in the medical records and sufficient documentation to justify controlled substance prescriptions, which protects the doctors as well as the patients. Tr. 720–21. It is also the doctor's responsibility to review patient medical records and ensure they are complete and accurate. Tr. 720. [Dr. Shurman agreed that ''patients on high-dose opioids are put at a higher risk for other problems.'' Tr. 721.]

It was within the standard of care at the time of an initial visit to keep a patient on his existing medication level, even if he was on high-dose pain control medications or a combination of anti-anxiety drugs, benzodiazepines, or muscle relaxants, if the patient was already on these drugs for some time. This is because, according to Dr. Shurman, it is important to get to know the patient and make a plan to slowly taper. Tr. 630–32, 640–41. The standard of care from 2016–2019 did not require that a physician take a patient's vital signs at every visit when the patient was prescribed above 90 MME. Tr. 642–43. The Respondent's frequency in taking vitals was within and even above the standard of care for the four patients because the Respondent was using pulse oximetry to measure the oxygen saturation levels of his patients and monitor for respiratory depression. Tr. 644–46.

Dr. Shurman opined that the standard of care does not require that a doctor examine the same area on the body every week or every two weeks; a limited exam every month or two is sufficient [''unless the patient has a complaint . . . or an exacerbation.''] Tr. 648. Pain management agreements are important for the doctor to have a discussion with his patients about the risks of psychological dependency, addiction, physical dependence, and side effects. Tr. 649. Executing a pain management agreement with a patient as a way of having an informed consent discussion was the standard of care. Tr. 650–52. Dr. Shurman reviewed the pain management agreements available in this case, [but he did not clearly testify that the pain agreements here, absent a documented discussion, were sufficient to meet the standard of care for informed consent.] Tr. 652–54.

During the period from 2016 to 2019, the standard of care was to review CURES Reports for patients on high doses of opioids every four months and the Respondent met this standard of care for all four patients. Tr. 665–66. According to Dr. Shurman, addiction is when a patient is ''crushing . . . injecting . . . diverting . . . selling and all that.'' Tr. 680–82. The standard of care in California allows physicians to have different opinions about the alternative methods of treatment of patients. Tr. 701.

Overview

For this case, Dr. Shurman spent approximately ten hours reviewing the Respondent's medical records (which included the time ''he dream[ed] about [the case]'') and the summary prepared by Dr. Wiederhold, which assisted in his opinion about this case. Tr. 718–19. Dr. Shurman prepared, signed, and reviewed the reports, which were identified as Respondent's Exhibits S, T, U, and V. Tr. 618–20.

Dr. Shurman opined that the Respondent met the standard of care in terms of informed consent for all four patients based on the Respondent offering Narcan and performing the oximetry [which, according to Dr. Shurman, reflected that Respondent ''was concerned.''] Tr. 655–56. The existence of pain management agreements is very important. Tr. 656. The Respondent's actual documentation should have been better than it was in some areas for all patients. Tr. 669–71.

Legacy patients are long-term patients who have been brought in on high-dose opioids. Tr. 687–88. [Dr. Shurman clarified that all of the patients at issue in this case are legacy patients and suggested that the standard of care for them was different than for patients who are new to pain management.[*K] *Id.* (''When you look at the 2016 guidelines, the focus is really on new patients.'')] The CDC guidelines suggest to slowly taper such patients if possible. Tr. 729.

All of the Respondent's patients had some organic source for their chronic pain conditions and the Respondent explored alternative means of trying to help these patients with their chronic pain problems. Tr. 695–96. Dr. Shurman opined that it was excellent that the Respondent tried various other avenues besides medications, including electric stimulation, injections, and medications other than opioids. Tr. 696. The Respondent also conducted pharmacogenetic testing, which identified that some patients were rapid metabolizers, which would need to be taken into consideration when reviewing urine screens; such a diagnosis would be important to document in the patient's medical record. Tr. 696–99, 731. The Respondent closely monitored all his patients. Tr. 707. When treating these four patients who were on high-dose MMEs and combinations of medications such as benzodiazepines, muscle relaxants, or sleep medication, it is a balancing of risks versus benefits in

[*K] The CDC Guidelines do address prescribing for patients who are new to opioids; however, they also clearly address patients who use opioids long-term and even patients who are new to the clinician but on long-term opioid therapy. *See* GX 5. Accordingly, I disagree with Dr. Shurman's suggestion that the CDC Guidelines do not apply to legacy patients.

deciding how to manage the patient and it depends on the patient. Tr. 711. None of the risks manifested in these four patients while the Respondent was treating them, and Dr. Shurman opined that the Respondent had really good judgment. Tr. 712.

Patient D.P.

Regarding D.P., Dr. Shurman testified that the standard of care would require that, at the initial visit, the doctor have a discussion with the patient and try to taper down his dosage slowly as he had been prescribed approximately 3,000 MME by a previous physician, which is an unusual situation. Tr. 653–54, 657, 660–61, 685. The standard of care would also require that the Respondent talk about the risk of addiction and the risk of overdose. Tr. 654. The records did reflect that D.P. was provided Narcan, which is used to reverse the effects if someone has a severe respiratory depression. Tr. 654. The notes in the medical records also showed that the Respondent had discussions about trying to taper D.P. Dr. Shurman testified there was a risk in quickly decreasing D.P.'s MME as there was a study that forced tapers led to forty-three percent of the patients being hospitalized. Tr. 657–58, 726.[35]

It was evident that the D.P. remained relatively safe under the Respondent's care because D.P. was clear and alert; his urine screens,[36] oximetries, and CURES were appropriate; and he had a quality of life. Tr. 658. D.P. had a painful condition called chronic cellulitis. Tr. 660. He went to a detox center and ultimately ended up with severe withdrawal and pain. Tr. 667–68. When he was at UCSD, the doctors there continued to prescribe him the same medications. Tr. 659. Dr. Shurman disagreed with Sharp's detox treatment in 2019. Tr. 726–27.

The standard of care requires that a doctor make an attempt to obtain patient records, but in this instance, the Respondent had D.P. as a patient in the past. Tr. 687. It would be a good idea to get records, but it is in the Respondent's judgment if he knows the patient well.[*L] Tr. 686. It is also better to document any discussion with patients, but Dr. Shurman made inferences that such discussions were had based on the different things Respondent did during exams. Tr. 724–25. Looking at the prescriptions for D.P., [Dr. Shurman opined that] these prescriptions were within the standard of care. Tr. 687.

Patient J.K.

Assuming the Respondent had discussions with J.K. about the urine drug screen reflecting the presence of amphetamine and about her prescriptions for medical marijuana, and assuming he checked CURES to verify the amphetamine prescription,[*M] Dr. Shurman opined that it was appropriate for the Respondent to continue J.K.'s prescriptions despite the fact that she was taking marijuana. Tr. 672–74. However, such discussions should be in the medical records.[*N] Tr. 727–28. Dr. Shurman has encountered circumstances where fentanyl patches did not properly adhere to patients, which is a common problem. Tr. 675. J.K. was also on hormone therapy which could cause excessive perspiration. Tr. 709. Assuming the Respondent had discussions with J.K. regarding why the fentanyl derivative was not in her system, it was within the standard of care for him to continue to treat her with medication. Tr. 676. Patients will not always take medications as prescribed and the doctor should look at the average of what their patients are taking.[*O] Tr. 677–78.

The Respondent attempted to treat J.K.'s migraine headaches with Botox while she was seeing an oncologist for her breast cancer. Tr. 699–700. It is considered a controversial position, but some doctors, including Dr. Shurman believe it is appropriate to use higher doses of opioids to treat resistant or intractable migraines, which is within the California standard of care. Tr. 700–01. Overall, [Dr. Shurman opined that] the Respondent's prescriptions for J.K. were acceptable within the standard of practice under the circumstances. Tr. 702.

Patient P.S.

P.S.'s pain scale reporting did not change much over time and it would have been difficult to taper his prescriptions due to his chronic pain problems. Tr. 689–91; RX U. Regarding the aberrant drug screens, Respondent followed the standard of care of P.S. as long as he had a discussion with him because Respondent followed him closely with CURES, urine screens, etc., to ensure there is not an ongoing problem. Tr. 692–94. Based on a review of P.S.'s medical record, P.S. had an anxiety disorder. Tr. 695. Overall, the prescriptions the Respondent prescribed to P.S. were prescribed within the acceptable standards of practice under the circumstances, as P.S. was a very challenging patient. Tr. 699.

Patient D.L.

The Respondent treated D.L. with opioid medication, benzodiazepines, and a sleep medication, Lunesta.[37] Tr. 702, 706. Although there is a black box warning about prescribing ''benzos'' and opioids, the doctor may still prescribe the combination after considering the risks/rewards and following the patient carefully. Tr. 706. It was within the standard of care for the Respondent to continue D.L. on those medications at the initial visit because she had colon cancer, polyneuropathy, hip pain, and a failed spine surgery. Tr. 702–03. As that was Respondent's first time meeting the patient, the Respondent would not want to promptly start to taper the patient and should ''get a feel for them'' by getting a history, urine screens, CURES, etc. before making a decision. Tr. 703. The Respondent did pursue these urine drugs screens and CURES reports in this instance.[38] Dr. Shurman disagrees with

[35] [Footnote modified for clarity. On cross-examination, Dr. Shurman stated that he ''[did not] find specific documentation of a discussion'' between Respondent and D.P. regarding the ''various risks associated with him taking opioids at such a high dose.'' Tr. 722–23. However, he inferred these discussions occurred because the pain management agreement said ''he will discuss other side effects with the patient.'' Tr. 723. And without such a conversation, ''why did he use an oximeter, why did he give the patient Naloxone, . . . there's obviously a reason for it.'' Tr. 723. However, Dr. Shurman ultimately agreed that he ''never saw anything in the medical records that documented a discussion about the high risks due to high-dose opioids.'' Tr. 723–24.]

[36] Urine screens are used for multiple purposes including to make sure that a patient is taking his prescriptions and to monitor illicit drugs. Tr. 661. In D.P.'s case, the Respondent went above the standard of care regarding urine screens because it is an undeserved population and such screens only need to be done about every three months. Tr. 662–63, 725. The urine screens for the other three patients were also excellent and above the standard of care, as they were the more costly, confirmatory urine screens. Tr. 663–64.

[*L] Sentence moved for clarity.

[*M] Sentence modified for clarity.

[*N] Dr. Shurman testified that, ''one of the things [Respondent is] going to improve on [is] to take an abnormal screen, document in his records and in certain cases discuss it with the patients. But [there is] no lapse in his clinical judgment.'' Tr. 728.

[*O] Specifically, Dr. Shurman testified, ''[t]here are side effects sometimes, nausea, constipation. And sometimes they're having a good day, they may not take it. Or sometimes they're having a bad day and they may take more. And to kind of look at the average of what these patients take, . . . sometimes it may not show up.'' Tr. 678. He went on to testify that the standard of care did not require that a physician immediately taper medications or refer a patient to an addictionologist following an aberrant drug screen. Tr. 679. Instead, ''you talk to them about [the aberrancy]'' and if the patient says they are ''taking more than they usually take . . . to stabilize their pain . . . [then you] don't consider it aberrant behavior.'' Tr. 682.

[37] Dr. Shurman clarified that Lunesta, or a sleeping agent, is not part of ''the Holy Trinity.'' Tr. 706. [Text from preceding sentence omitted for clarity.]

[38] At this point in the testimony the Government's counsel noted that the document Dr. Shurman was using had highlights and notes. Tr. 704. The

Dr. Munzing's opinion that every single prescription for patient D.L. was below the standards of practice and in fact [opined that] the Respondent's prescriptions for D.L. were within the standard of care. Tr. 707–08. D.L.'s reported pain level stayed around five or six-of-ten throughout treatment, which is an indication that overall the treatment was effective for her and is in fact a doctor's goal. Tr. 711.

Brenton D. Wynn, M.D. (the Respondent)

The Respondent grew up in San Diego and graduated from UCLA with a bachelor of science in physiological sciences. Tr. 469. He attended Howard University College of Medicine and received his M.D. in 1998. He did his first year of preliminary internal medicine at Good Samaritan Regional Medical Center in Phoenix, Arizona, and started his physical medicine and rehabilitation residency program at Stanford University Medical Center. He then went to the Louisiana State University Health Science Center for a fellowship in musculoskeletal and interventional spine medicine.

In 2004, he went back to San Diego and became the only pain physician affiliated with Paradise Valley Hospital in National City, where he maintained the practice for ten years. Tr. 469, 475. He is board certified in both physical medicine rehabilitation and pain medicine. Tr. 470. He then started with another group in 2014, where his focus was on pain management patients, but left that group in May 2016 to begin the process of rebuilding his own private practice. Tr. 475–76. From 2014–2016, he also worked at the Paradise Valley Hospital Outpatient Senior Health Center, where he did pain management or pain medicine. Tr. 476.

He currently works in outpatient medicine, primarily doing interventional procedures four days a week. He has two nurse practitioners in the practice that assist him with the evaluations and management of the patients. Tr. 477. Eventually, Respondent was able to secure his practice location separate and apart from the Senior Care Facility. Tr. 478. He is currently leasing a space in National City. He is the only pain management doctor that services this area of National City, of approximately 62,000 patients. Tr. 479–80. About sixty percent of the Respondent's patients use Medicare, and the vast majority of the remaining patients are under some sort of IP or managed care plan that is a Medi-Cal or Medi-Cal-affiliated program. Tr. 480.

When he was at the Senior Health Center, he used the hospital-based electronic record system and his primary entry method was through dictation. Tr. 481. He currently uses Practice Fusion, a free internet-based electronic health record system, which he was using once the four patients came to him at the new location. Tr. 481–82. During this time he worked with a receptionist, an office manager, a practice manager, medical assistants, a biller, and nurse practitioners that were hired and staffed through a management company but were ''not technically'' his employees. Tr. 483–84. He currently uses a scribe to enter information into the EMR for better record entry, while his nurse practitioners enter the notes themselves. Tr. 484–85.

Since Dr. Wynn received the subpoena for this case, he has tried to enhance his recordkeeping practices and enrolled in courses through the University of San Diego School of Medicine and the PACE Program that focused on recordkeeping and prescribing controlled substances. Tr. 488, 490.[*P] He has stayed abreast on current thinking in his area of chronic pain management over the last five years by attending conferences, where there is a PME available, reaches out to fellow colleagues to have dialogues about treatment or new ideas, and attends educational events where pharmaceutical representatives present information. Tr. 567. In 2019, he sat and recertified for his Pain Boards, which required numerous hours of review. Tr. 567. He also attended multiple national meetings.

The Respondent saw all four of the patients at issue in his current practice and had been treating them prior to establishing his current practice. Tr. 491–92. All of these patients were already prescribed opioids when they first met with the Respondent. Tr. 492. When patients enter the Respondent's office, they check in at the front with the receptionist, and there is a process to verify their eligibility, address, and insurance information. Tr. 538. Patients then fill out a pain diagram and sit in the waiting room. Patients then have their height, weight, and temperature taken and are taken to the exam room, where vitals, including blood pressure and maybe temperature are taken. Medical assistants (hereinafter, MAs) ask some of the questions that are done on the subjective. That information is then discussed with the provider who will see them at the visit. The CURES report and previous drug screen are reviewed if that patient is there for a refill visit prior to the provider entering the exam room. Tr. 538–39. The provider then typically discusses the patient's history and any new or ongoing concerns, performs a physical exam, reviews any documentation such as imaging studies or nerve conduction studies or information from a primary care doctor, and discusses the treatment plan.[*Q] Tr. 539. Since COVID, the vast majority of medication refill visits are done through telemedicine. Tr. 539. Prior to COVID, it was his customary routine to do an exam and put his hands on the patient, which could include listening to the heart, lungs, and respiratory rate, observing their gait, and palpating the area of concern. When he prescribed a significant amount of opioids, he also provided Narcan. Tr. 753.

In the beginning of the practice, they were still getting acclimated to the Electronic Health Records (''EHR''), so some things were missing in the medical records, but as time went on, there was improvement with the vitals ''actually making it into the chart and the documentation making it into the chart.'' Tr. 540. For instance, earlier in the practice, the MAs would write vital signs on a sticky note and the Respondent did not know if they always ''ended up in the'' medical record. Tr. 540–51. He currently continues to see P.S. and D.F. as patients. Tr. 747. None of his patients, have experienced the risks of overdose, addiction, or significant respiratory distress to the point that they needed Narcan or to call 911 while he was treating them. Tr. 748–49.

As to all his patients, he believed he was within the range of the accepted standard of care, setting aside the issue of documentation, because he conducted a thorough examination at each initial visit, reviewed CURES, gave urine screens, reviewed any documentation provided by previous physicians, discussed the treatment plan, went through a controlled substance agreement, discussed the use

Respondent's counsel emailed the document to the Government's counsel at the next recess. Tr. 705.

[*P] When Respondent was asked whether he had ''any thoughts or opinions about whether or not the recordkeeping for these patients in some areas . . . was adequate enough for purposes of good recordkeeping,'' he answered ''I would say that some areas are appropriate.'' Tr. 488. Then when asked whether ''there are any areas that in your opinion, looking back now at these records, that you feel are less than adequate for what they should be?'' Respondent answered ''Yes, I do.'' *Id.*

[*Q] With regard to the treatment plan's timing for titration down from high levels of opioids, Respondent believed ''there's a right time to initiate doing some changes to a patient, and I would prefer to do it when the patient is able to comply and buy in because they're a lot more stable with their current pain or pain and anxiety control.'' Tr. 771.

of Narcan, discussed the risks of opioid-use, and discussed the CDC guidelines. Tr. 764–68. Some of the areas of the medical records were less than adequate. Tr. 488.

Respondent agreed that the standard of care requires sufficient documentation in the medical records to justify controlled substance prescriptions to patients [and requires complete and accurate medical records], which protects the doctors as much as it helps the patients. Tr. 778–80. Doctors are also ultimately responsible for preparing those complete and accurate medical records. Tr. 780. He currently serves 600 active patients and has approximately 7,000 patient visits annually. Tr. 830.

Patient D.P.

Patient D.P. was referred to the Respondent for pain management in approximately 2014. Tr. 493. Patient D.P. went to another doctor at some point and then returned to the Respondent's care when he opened his new practice. Tr. 493–94. When D.P. returned, he was on a high level of opioids and the Respondent had never taken care of any patients who were at that high of a level of controlled substances prescriptions. Tr. 494–95. When D.P. came to the Respondent in approximately 2016, the Respondent had reservations about taking him on as a patient because of the high MME, but took him back because he was familiar with D.P., he knew he was a reliable historian, he had worked with the pharmacy where D.P. had received his prescriptions, and D.P. understood that they would establish a plan to safely taper his medication. Tr. 496–97. He and D.P. had a discussion that he was willing to work with him, but discussed the CDC guidelines and D.P.'s opioid load and said that the amount prescribed would need to be decreased to an amount under 1,000 MME. Tr. 496, 544–45. The Respondent is familiar with the concept of informed consent and ''in his mind'' he had a discussion with D.P. that was adequate informed consent regarding his wound care and the risk of habituation,[39] overdose, or death from overdose due to his high MME. Tr. 499–500.

The Respondent initiated titration at some point, but D.P. either would not tolerate it or had withdrawal and there was an incident where D.P. was removed from a plane because he looked ill, which the Respondent attributes to aggressive titration. Tr. 545. After a course of detox, D.P. was placed on Suboxone, which did not manage his pain at all. Tr. 546. D.P. returned to the Respondent and his pain was uncontrolled; the Respondent believes he tried to continue to manage D.P. on the Suboxone, but ultimately had to prescribe oxycodone not exceeding 90 MME. Tr. 546–47, 549. The Respondent stated that there was room for significant improvement in his documentation of D.P.'s care. Tr. 549.

The Respondent testified that he talks to patients about safety issues and diversion prevention and emphasizes the risks of opioid use, including the fact that these patients can be targets for theft, assault, and having their medication stolen if people learned they had those medications. Tr. 500. He typically explains the meaning of MME in a way the patients can understand. Tr. 501.

Patient D.P. admitted to the Respondent that he had over-used some his medications at times. Tr. 541–42. When this happened, with D.P. as well as with other patients, the Respondent would review the controlled substance agreement with the patient and then discuss that is not how the medications were intended to be used; he talked about safety issues, and explained the potential of moving to non-medication options for future management if D.P. could not get back on track. Tr. 542. The Respondent did not discharge D.P. from the practice because they discussed other treatment options including nerve blocks, but ultimately Respondent decided to keep D.P. on his medications. Tr. 542–43. In particular, he had wound care that would be very painful when he received debridement and he would take more medication before and after those debridements. Tr. 543–44. In such cases, however, the Respondent should have discussed and documented this in the medical records. Tr. 781.

If D.P. had problems filling his prescriptions, he would let the Respondent know in most cases. Tr. 782–83. On August 14, 2019, D.P.'s pharmacy started to severely restrict his ability to fill his Oxycodone prescription by only allowing a 48–72 hour fill and there is a note stating ''Cardinal would NOT . . . replenish the Oxycodone need for this patient. Therefore as an urgent matter, only do a 48 to 72-hour prescription for all his four oxycodones until his doctor finds a different solution.'' Tr. 783–85.

Patient J.K.

Patient J.K. was referred to the Respondent and she followed him to the group clinic, he ''kind of lost care to her directly,'' and then she was re-referred to him after he reestablished his own practice. Tr. 549–50. Aside from migraines, she had chronic knee pain and various joint pain that she attributed to her chemotherapy. Tr. 550, 569, 738. The Respondent evaluated whether or not the extent of these problems made it appropriate to use pain medication to treat these conditions. She had previously been prescribed an opioid from another provider to help manage her migraines and the Respondent continued that care. Tr. 550–51. He prescribed a Botox treatment for her, but due to insurance issues he could not get an ongoing authorization approved to treat her migraines with Botox. Tr. 551, 552, 743–44. At some point, the Respondent was treating her while she was uninsured and when she did receive insurance, it was an insurance plan that he had not contracted with so she ended up being treated by another physician. Tr. 551–52.

Respondent testified that J.K. had previous workups with a neurologist in the past and had sinus surgery so the Respondent did not feel as though he needed any imaging studies to treat her for migraine headaches. Tr. 552. She was initially on a fentanyl patch and he continued with that. Tr. 553. She was also prescribed Percocet, (as a short-acting breakthrough medication), Soma (to diffuse muscle spasms), and Nuvigil (to improve excessive daytime sleepiness[40]). Tr. 553–54, 559. It was his custom and practice to discuss any risk associated with combining muscle relaxants with the other pain control medications. Tr. 559. He explained to J.K. that this was not a safe medication combination and that it is habit-forming and addictive and he explained the negative effects of opioids in terms of overdose and potential death. Tr. 559–60, 739. After this discussion, he still continued prescribing the medications because he believed there was a legitimate medical purpose in doing so. Tr. 560. He wanted to reduce the Soma because he was concerned it was not the best medication for her, but it took a while for her to ''buy-in on reducing the medication.'' Tr. 560. If J.K. reported her pain as being a four or five out of a scale

[39] According to Respondent, habituation is a form of physical dependence on a drug. Tr. 503. This terms tends to be interchanged with the term ''addiction,'' which is a behavioral syndrome. Illicit drugs appearing in urine screens is the initial most common thing that indicates a patient is abusing drugs. Tr. 747. Drug metabolites test positive for a longer period of time in urine than blood. Tr. 763. He would go around patients showing drug-seeking behavior, asserting they could not produce a urine sample by taking a saliva or blood sample. Tr. 763.

[40] At one point the Respondent tried to refer J.K. to a sleep medicine specialist for a sleep lab. Tr. 739–40.

of 10, he saw that as her being stable and her pain being controlled. The plan was that she would remain stable if he did a slow titration. Tr. 561. She also reported that the medication would allow her to maintain her work duties and activities of daily living at home.

He suspected that J.K. had some elements of undiagnosed brain injury based her behavioral issues, continued headaches, and her history of being the victim of physical abuse. Tr. 554. Regarding inconsistencies in J.K.'s urine drug screen, he believed the amphetamine was a prescription medication based on how it appeared. Tr. 553–54, 740. After inquiring, J.K. told him that she was prescribed Adderall from her psychiatrist, which the Respondent also saw in the CURES report. Tr. 555–56. He therefore did not have any issues with J.K.'s drug screen testing positive for amphetamine because he knew it was not an illicit drug. Tr. 557.

The Respondent also recalls times when J.K.'s urine screens lacked the presence of one or more of her prescribed pain medications and he recalls having a conversation with her at a visit. She stated that she was having issues with her fentanyl patches adhering due to excessive sweating so she would replace them before they were due to be changed, which left her short prior to the time of her next refill. Tr. 557. The Respondent considered switching J.K. to an oral medication and at some point he did and prescribed oxycodone and oxymorphone. Tr. 558.

At one point, his office was treating her despite her not having insurance and not charging her for continuity of care. Tr. 561–62. On her last visit the Respondent wrote her a supply of medications that would help her until she could get a new provider with her new insurance, but she was unable to obtain the medications due to an authorization issue. Tr. 562. She did not understand that the Respondent could not fill out the authorization because he was not affiliated with her new insurance plan and acted out of desperation because she was out of medication. Tr. 563. He ultimately authorized some additional prescriptions for her with the understanding that she was actually without her medication. He did not believe she had any intention of following through on her suicide threats. Tr. 564.

The Respondent acknowledged that some drug screens came back positive for THC and [he did not believe it was an inconsistent result] because she had previously been placed on Marinol during her treatment for stage-one breast cancer. Tr. 564–65, 781. He discussed with her that THC could be a sedative or a stimulant depending on what type she was using and if it did not come from a reputable source, it could be laced or tainted, which could be dangerous. Tr. 565–66. She was getting marijuana from a dispensary and the Respondent did not find that her concomitant use of marijuana was a contraindication for him to prescribe her medications for pain management. Tr. 566–67, 740. Other providers agree with this line of thinking. Tr. 567. Furthermore, the chemotherapy J.K. underwent could cause residual side effects, including prolonged pain syndromes. Tr. 738. The Respondent carefully monitored her to ensure that risks did not develop through frequent visits where her vitals were taken and discussions were had with her, even though these discussions may not be reflected in the record. Tr. 745–46. He testified that his care of J.K. was within the standard of care despite not lowering her MME closer to 90 or 100 because they had a discussion about the overall plan to bring her down, but they had challenges with insurance [*R] and had various social stressors; he was able to ultimately completely titrate her completely off benzodiazepines. Tr. 744, 770–72. Furthermore, she is currently on close to 200 MME, which is a significant improvement [in safety] and his decisions for her care were made based on his personal judgment and how the patient's overall quality of life is affected. Tr. 772–73.

Patient D.L.

D.L. is still the Respondent's patient. Tr. 751. When she returned to the Respondent as a patient, she was already on [a dose of 100 mg morphine sulfate],[*S] and he had a discussion with her about what medications she was on and what risks they might pose moving forward, which included a discussion of the 2016 CDC Guidelines. Tr. 751–52; 782. He also provided Narcan and explained how to use it. Tr. 754–55; GX 14 at 37. On a November 2016 visit, a note indicated, ''Education,'' which Respondent testified meant that he would have discussed the combination of medications and the high-dose opioid. 755–57; GX 14 at 40. He also ordered pharmacogentic testing on D.L. to understand why she may have needed a higher dose of opioids or why there were discrepancies in urine screens. Tr. 759–60. He learned she had an altered gene expression that related to how she responded to morphine, but he could not change her dose due to insurance reasons. Tr. 760. His management of D.L. was within the range of the accepted standard of care, setting aside the issue of documentation, because they had discussions regarding her treatment goals and she was still having uncontrolled pain. Tr. 764–65, 769–70.

Patient P.S.

The Respondent believes that for P.S., he struck a reasonable balance under the standard of care between his need to have relief, have a quality of life, and the risks associated with his pain levels. Tr. 773–74. He is still the Respondent's patient, and is currently [at a lower MME than he had been] [*T] and he is open to other therapeutic interventions. Tr. 774. The Respondent resolved P.S.'s inconsistent urine screens by counseling him and reassuring him when he was being compliant. Tr. 776. The Respondent did not think that P.S. was abusing his prescriptions, but instead thought he had good days and bad days with taking his prescriptions.[*U] The Respondent tried to get P.S. in to see a psychiatrist. Tr. 776–77. Furthermore, sometimes when the Respondent changed a patient's dose, there can be issues with the insurance companies or authorizations with the pharmacies and he would have to ''play their insurance games in order to actually get the patients treatment the way we're intending,'' so sometimes it looked as if some medications were duplicated when they were not. Tr. 778.

In October of 2020, the Respondent prepared a document with the aid of his staff and Dr. Shurman to show ongoing actions that his practice is taking ''to improve the quality of documentation and care and compliance with the guidelines.'' Tr. 822–24; RX W.[41] [Respondent testified that he is implementing the actions currently and intends to continue to so do. Tr. 823.]

[*R] Respondent testified that ''every time you change a dosing, the insurance requires that you submit an authorization, . . . [s]o that in itself can delay the process of even initiating a titration when you would like to.'' Tr. 744.

[*S] Modified for clarity.

[*T] Modified for clarity.

[*U] Respondent agreed that for a patient on high-dose opioids, taking a little more than prescribed, even if it is to control pain, can be dangerous. Tr. 781. He further agreed, that if a doctor finds out that a patient is taking more than prescribed, he should discuss that with the patient and document the discussion in the medical records. *Id.*

[41] The tribunal allowed the Respondent's counsel to recall the Respondent to testify regarding this exhibit over the objection of the Government's counsel. Tr. 820–21.

Closing Statement [42]

The Respondent acknowledged there was a lack of documentation in this case. Tr. 870–71. However, when balancing whether it would be inconsistent to allow the Respondent to continue with his DEA certificate, Respondent argued that it was important to weigh his experience as a pain management physician overall. Tr. 871. None of his patients had an overdose and there were no particular complications or adverse effects the patients suffered. The record reflects that he monitored patients, reviewed CURES reports, had patients visit frequently, performed frequent urine screens, and tried to find alternative means of treatment, which reflects what is in the public interest and patient safety. Tr. 871–72. The Respondent also served an underserved population. Tr. 872. The evidence shows that even though the Respondent did not keep accurate records regarding informed consent discussions with his patients, these discussions likely took place. Tr. 872–73. Patients D.L. and D.P. also stated that they had informed consent discussions with the Respondent. Tr. 873. In the big picture, there can be a debate between experts about whether the prescriptions were within the balance of reasonable judgment. Tr. 873.

The Respondent has put forth evidence that he has demonstrated efforts to rehabilitate and did not deny anything about the records being lacking. Tr. 874. According to Respondent, the evidence does not support the Respondent having his DEA certificate revoked. Tr. 875.

Rebuttal

Dr. Munzing

After listening to the testimony from Dr. Shurman, Dr. Wiederhold, D.P., D.L., and the Respondent, Dr. Munzing did not change any of the opinions to which he previously testified. Tr. 833–35. Dr. Munzing strongly disagreed with Dr. Shurman's opinion regarding the acceptability of prescribing benzodiazepines and opioids together. Tr. 837. Specifically, there are strong pushes, based on warnings and guidelines from the CDC and FDA that doctors should avoid prescribing benzodiazepines and opioids together and, if it is done, such prescribing requires documentation. Tr. 827–38. Dr. Munzing did agree with Dr. Shurman that keeping a patient on a higher dose when he first begins care is consistent with Dr. Munzing's testimony.[*V] Tr. 839. Dr. Munzing's issue with the instant case is that the patients were maintained at high levels over a period of many years. Tr. 839, 856. Dr. Munzing also agreed with Dr. Shurman's assertions that chronic patients should be slowly tapered. Tr. 839–40. Ultimately, Dr. Shurman's assertion that there was no lapse in the Respondent's clinical judgment was incorrect. Tr. 841. Dr. Munzing also reiterated that multiple aberrant drug screens are problematic and must be documented in the medical records. Tr. 844.

Dr. Munzing also reiterated the importance of the Respondent failing to take vitals at each visit, even if visits are weekly, because such frequent visit shows that the Respondent believed his patients needed close monitoring. Tr. 852. [According to Dr. Munzing, ''if you believe the patient is unstable enough or tenuous enough that you need to see the patient every week, then you're indicating that you need to more intensively see the patient.'' Tr. 852.]

Dr. Shurman

Dr. Shurman testified that it would not be extremely dangerous for a patient to take medical marijuana with an opioid and a benzodiazepine, it should just be treated as another medication, and it is common for people to be prescribed to this combination. Tr. 866.

The Facts [*W]

Findings of Fact

The factual findings below are based on a preponderance of the evidence, including the detailed, credible, and competent testimony of the aforementioned witnesses, the exhibits entered into evidence, and the record before me:

During the hearing conducted via video teleconference from November 16–20, 2020, the Government established the following facts through evidence, testimony, or stipulation.

1. DI has been employed by the DEA as a Diversion Investigator for thirty-two years. Tr. 21:4–6.

2. Respondent came to the attention of the DEA in October 2018, based on a report by a local pharmacist that Respondent was excessively prescribing controlled substances. Tr. 22:11–17.

3. Between March 17, 2017, and March 19, 2019, Respondent dispensed over 590,000 dosage units of schedule 2 through schedule 5 controlled substances. Based on DI's experience, this was an extremely high number of dosage units. Tr. 23:19–25—24:1–8.

4. Between March 17, 2017, and March 19, 2019, Respondent dispensed almost 190,000 dosage units of various strengths of oxycodone, equating to over 1,700 prescriptions. This represented 32% of all Respondent's prescribing over this period. Tr. 24:15–25—25:1–3.

5. Between March 17, 2017, and March 19, 2019, Respondent dispensed almost 123,000 dosage units of various strengths of hydrocodone, equating to over 1,370 prescriptions. This represented 20% of all Respondent's prescribing over this period. Tr. 25:4–7.

6. Between March 17, 2017, and March 19, 2019, Respondent dispensed almost 88,000 dosage units of oxycodone with acetaminophen, equating to over 922 prescriptions. This represented 14% of all Respondent's prescribing over this period. Tr. 25:7–10.

7. Dr. Munzing's curriculum vitae was admitted into evidence as GX 2. Tr. 61:10–25—62:1–15. He is a licensed physician in the State of California, who has worked in the field of family medicine for nearly 40 years. Tr. 89:14–23.

8. Dr. Munzing received his undergraduate degree, a Bachelor of Science in Biochemistry, at the California State University at Fullerton. He received his medical degree from the University of California, Los Angeles, in 1982, and did his residency at Kaiser Permanente Medical Center in Los Angeles. He became Board Certified in Family Medicine in 1985, and that certification still current and active. Tr. 62–63.

9. Dr. Munzing has been a family doctor for 35 years. For the last 32 years he has been the Founding Residency Director of a Family Medicine Residency program, which works in close conjunction with every other specialty, including Internal Medicine, Pediatrics, ObGyn, Anesthesia, and pain medicine. Tr. 63.

10. Dr. Munzing has been working in the family medicine department of Kaiser Permanente, Orange County, for the last 35 years, twice serving as

[42] The Government deferred its closing statement to the post-hearing brief.

[*V] On cross-examination, Dr. Munzing testified that it was possible, given Respondent's prior relationship with the patients, that the initial prescriptions at the first visit when the patients returned to Respondent could have been within the standard of care on every element other than appropriate documentation. Tr. 860–62.

[*W] The parties agreed to Joint Stipulations A–U, Y–Z, BB, CC, EE, FF, HH, and II. *See* ALJ Ex. 4, Govt Prehearing, at 2–38; ALJX 15, Resp Supp. Prehearing, at 1. The RD included many of the stipulated facts between the parties, but appears to have inadvertently left some out. *See* RD at 70–110. I have omitted the joint stipulations from the text of this decision in the interest of brevity, but I incorporate fully herein by reference Joint Stipulations A–U, Y–Z, BB, CC, EE, FF, HH, and II.

president of the medical staff. In his role as president of the medical staff, he was responsible for overseeing the professionalism and quality of care provided by the staff. Tr. 66.

11. Dr. Munzing has a DEA COR and an active clinical practice, prescribing, inter alia, opioids, benzodiazepines, and other controlled substances when indicated. Tr. 64–65.

12. Dr. Munzing also sits on the National Accreditation Board for Family Medicine Residency, which accredits all of the family medicine residency programs in the United States of America. Tr. 63–64.

13. Dr. Munzing has been a Medical Expert Consultant for the Medical Board of California for approximately 16 years. Tr. 64:6–13.

14. Dr. Munzing has been called upon to provide opinions about the prescribing of other medical professionals, and he has been qualified as an expert witness in over 30 cases, including in DEA administrative hearings. Tr. 67–68.

15. As a licensed California physician who has been practicing in California for nearly 40 years, Dr. Munzing is familiar with the standard of care for prescribing controlled substances in California. He also has reviewed publications by the Medical Board of California that inform his understanding of the standard of care, including the ''Guide to the Laws Governing the Practice of Medicine by Physicians and Surgeons (7th Edition)'' (admitted as GX 3, Tr. 71:2–13); the ''Guidelines for Prescribing Controlled Substances for Pain,'' (admitted as GX 4, Tr. 74:4–15); the CDC guidelines regarding Morphine Milligram Equivalents (GX 5, Tr. 104–108); and the FDA black label warning concerning prescribing opioids and benzodiazepines together (GX 6, Tr. 113–115). Further, Dr. Munzing reviewed several laws and regulations that informed his understanding of the standard of care. Tr. 68–74.

16. Dr. Munzing was qualified as an expert in Pain Management and as an expert in the standard of care for prescribing controlled substances in California. Tr. 77:4–9.

17. Dr. Munzing testified that the standard of care in California first requires that, before prescribing controlled substances, a practitioner perform a sufficient evaluation of the patient, including, a medical history and appropriate physical examination. This includes an assessment of the patient and a determination as to whether any additional information is needed through, for example, laboratory tests, imaging studies, or other studies. Then, the doctor comes up with a specific assessment or diagnosis or likely diagnosis. After which, a doctor performs a risk stratification of the patient and assesses any other medical problems that may contribute to management of the patient. Then the doctor comes up with a management plan specific to the evaluation. Tr. 79.

18. If the management plan includes prescriptions for controlled substances, a determination needs to be made weighing the potential benefits and risks of such treatment. Once the plan is put into place, a doctor must monitor the patient on a periodic, regular basis. At all times, a doctor is attempting to mitigate risks to the patient by maximizing the benefit of the treatment and minimizing the risk. Tr. 79–80.

19. All of the elements of the management plan must be documented in detail, so in the future, a reviewer can get a detailed and truthful understanding about how the patient was on a certain date and what the reasoning was behind why a patient was being managed in a particular way. Tr. 80:12–21.

20. These rules regarding the standard of care in California apply equally to all practitioners, be it family practitioner or a doctor who specializes in pain management. Tr. 80:22–25.

21. The ''Guide to the Laws Governing the Practice of Medicine by Physicians and Surgeons (7th Edition)'' applies to all physicians in California, regardless of specialty. Tr. 82:11–17; GX3.

22. [The standard of care requires that] a patient should give informed consent regarding the risks and benefits of the use of controlled substances. Patients need to be fully aware of the risks they face and whether any alternatives exist to the proposed treatment, particularly when prescribing opiates. Tr. 85–86.

23. The standard of care in California requires that for patients at the high dosages of opioids, like those in this case, the doctor should obtain vital signs, blood pressure, heart rate, respiratory rate and perform an examination on the pertinent area at every appointment. Tr. 87:1–15, Tr. 851:5–15, 852:2–10.

24. Standard of care in California requires periodic review of the patient and constantly trying to assess the patient's risk and whenever possible, try to mitigate the risk by either bringing down medication dosages or using alternative treatments. Tr. 87:16–25.

25. When a doctor increases the dosage of a medication, it increases the risk to the patient. As such, the standard of care requires the doctor to well-document why the increase is necessary and document that the patient has been informed of and is aware that the increased medication poses an increased risk. Tr. 88:1–16.

26. The California standard of care requires that all physicians keep accurate and complete records for all aspects of patient care. GX 3 at 61; GX 4 at 22; Tr. 88–89.

27. The Medical Board of California's Guideline for Prescribing Controlled Substances for Pain (GX4) applies to all doctors, regardless of specialty. Tr. 90–91.

28. Patients taking benzodiazepines and opioids are at an increased risk for respiratory depression, particularly in elderly patients. Physicians should consider a trial of benzodiazepine tapering in patients concomitantly using opioids or other respiratory depressant medications. If a trial of tapering is not indicated or is unsuccessful, opioids should be titrated more slowly and at lower doses. GX 4 at 12; Tr. 92–93.

29. As treatment progresses, a physician must monitor the patient. A practitioner must periodically update the patient's medical history, conduct further physical examinations, and obtain updated information regarding the etiology of a patient's state of health. The practitioner must periodically review the course of treatment, ascertain how the patient is responding thereto, determine if continued treatment is appropriate or if the treatment plan needs to be modified, and document the rationale for any modifications. The practitioner must also periodically re-inquire into the patient's urine drug screens. Tr. 96–97.

30. Maintaining a high MME dose of medication for a patient, simply because that patient was on a high MME dose prior to treatment with a particular doctor, does not meet the standard of care in California. Tr. 109:17–21.

31. The standard of care and usual course of professional practice in California for treatment of pain and prescribing of controlled substances does not depend on whether the prescribing physician is a pain care specialist. Tr. 115:9–15. Appropriate documentation is a well-known, fundamental requirement in the medical community. GX 3 at 61; GX 4 at 22.

32. The practitioner must also comply with all relevant California law. Tr. 460–61, 462–63.

33. Between March 13, 2017, and October 29, 2019, Respondent issued Patient D.P. the controlled substance prescriptions stipulated to in ALJ Ex. 4.

34. Dr. Munzing concluded that the prescribing of these controlled substances to Patient D.P. between March 13, 2017, and October 29, 2019, violated the standard of care in

California in numerous ways and was not done in the usual course of professional practice. Tr. 120–77.

35. At times, D.P. was prescribed a dosage in excess of 6,000 MME per day. Dr. Munzing testified he believed it to be the highest MME he has ever seen. Tr. 118:1–5.

36. Between March 13, 2017, and October 29, 2019, Respondent prescribed D.P. approximately 1.4 million milligram dosage units of opioids per year, which was the highest Dr. Munzing has ever seen. Tr. 119:19–25.

37. The Controlled Substance Agreement executed by D.P. is not adequate to demonstrate informed consent by D.P. to the risks associated by Respondent's high-dose prescribing. GX 8 at 239; Tr. 121–22.

38. Over the course of his treatment, D.P received exceedingly high MME doses and exceedingly high numbers of pills, approximately 160 tablets per day. Dr. Munzing testified he had never seen a patient receive anywhere near that number of tablets per day. Tr. 123:19–25.

39. Between March 13, 2017, and October 29, 2019, D.P.'s MME levels fluctuated between 3,500 MME to over 6,000 MME, at times going down to 4,000 MME and then back up to 6,000 MME. Tr. 124:5–11.

40. Once D.P.'s care was taken over by Pain Management at U.C. San Diego in late 2019, D.P.'s MME dropped fairly quickly to 2,700 MME and has been slowly tapered to 1,000 MME and is now in the 700 MME range. Tr. 124:12–24.

41. The medical histories taken by Respondent for D.P. are poor and do not meet the standard of care in California. The medical records do not contain sufficient information and there is no documentation of attempts to mitigate D.P.'s symptoms or mitigate D.P.'s risk over time. Tr. 125:1–11.

42. Respondent acted outside the standard of care for D.P. by failing to adequately manage a patient on incredibly high doses of opioids and by failing to take vital signs at most of D.P.'s medical visits. Vital signs were taken at approximately 20% of D.P.'s visits, which, for a patient on such high doses of opioids, was outside the standard of care in California. Tr. 125:12–23.

43. Respondent's medical histories for D.P. do not even come close to meeting the standard of care to justify the incredibly high doses of opioids he prescribed to D.P. Tr. 125–26.

44. D.P.'s self-assessed pain score has not changed significantly despite being dropped from Respondent's incredibly high 6,000 MME to UC San Diego's 1,000 MME range. Tr. 126–27.

45. Dr. Munzing testified that, while there is no upper limit on the amount of opioids a patient can be prescribed by a practitioner, it would be hard to justify a dosage of over 500 MME. Dr. Munzing further testified that he has spoken with many pain management practitioners and lectured to a lot of pain management practitioners, and he has never had any pain management practitioner say that 1,000 MME is medically acceptable, much less two, three, four, five, or six thousand MME. Tr. 128–29.

46. On April 18, 2017, Respondent prescribed D.P. 280 tablets of 10 mg oxycodone, 280 tablets of 15 mg oxycodone, 280 tablets of 20 mg oxycodone, and 280 tablets of 30 mg oxycodone for 4,500 MME per day and 160 tablets per day (do not fill until April 26, 2017). Tr. 129–31; ALJ Ex. 4 at Stip. Y, 5–8; GX 9 at 2. Dr. Munzing testified this level of MME is astronomical. He testified he had never seen a dosage that high, including in his review of over 150 overdose deaths. Dr. Munzing also testified that Respondent's medical records were nowhere close to justifying this level of opioid prescribing. Lastly he testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 132–34; GX 8 at 246–53.

47. D.P. received a second set of prescriptions on April 18, 2107, for 280 tablets of 10 mg oxycodone, 280 tablets of 15 mg oxycodone, 280 tablets of 20 mg oxycodone, and 280 tablets of 30 mg oxycodone that could be filled on April 18, 2017. These are the same dosages as the prescriptions to be filled on April 26, 2017, another 4,500 MME per day and 160 tablets per day. ALJ Ex. 4 at Stip. Y, 9–12; GX 9 at 3. Dr. Munzing testified that Respondent's medical records lacked sufficient information to justify this level of opioid prescribing, including no record of vital signs or an examination. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 134–36; GX 8 at 261–69.

48. Between March 17, 2017, and January 3, 2018, Respondent repeatedly prescribed D.P. a combination of 280 tablets of 10 mg oxycodone, 280 tablets of 15 mg oxycodone, 280 tablets of 20 mg oxycodone, and 280 tablets of 30 mg oxycodone. ALJ Ex. 4 at Stip. Y, 1–105. Each time the MME was 4,500. Dr. Munzing testified these prescriptions were outside the standard of care as there was no attempt to taper D.P.'s opioid dose, and in fact, Respondent increased the opioid dosage by adding oxymorphone, 40 mg, 150 tablets, and oxycodone prescriptions on numerous occasions, including on May 30, 2017, July 3, 2017, and July 11, 2017. Between March 17, 2019, and January 3, 2018, Respondent acted outside the standard of care by failing to justify either the high doses of opioids or the spikes in MME by adding oxymorphone to D.P.'s prescriptions. Over this time period Respondent acted outside the standard of care by failing to document D.P.'s vital signs. Dr. Munzing testified that the prescriptions written to D.P. between March 17, 2019, and January 3, 2018, were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 136–43, GX 8 at 261–69, 372–78, 534–38.

49. On May 30, 2017, July 3, 2017, and July 11, 2017, Respondent prescribed D.P. 280 tablets of 10 mg oxycodone, 280 tablets of 15 mg oxycodone, 280 tablets of 20 mg oxycodone, 280 tablets of 30 mg oxycodone, and 150 tablets of oxymorphone 40 mg. This was a dosage of 5,100 MME. Tr. 140:9; ALJ Ex. 4 at Stip. Y, 21–23, 25–26, 38–47.

50. On November 13, 2018, Respondent prescribed D.P. a combination of 245 tablets of 10 mg oxycodone, 270 tablets of 15 mg oxycodone, 285 tablets of 20 mg oxycodone, and 260 tablets of 30 mg oxycodone. ALJ Ex. 4 at Stip. Y, 259–62. This represents an increase in Respondent's opioid dosage for D.P., which Dr. Munzing testified was ''astronomically high.'' Tr. 149–50. Dr. Munzing testified that in issuing these prescriptions, Respondent acted outside the standard of care by failing to document a reason to continue to prescribe D.P. this level of opioids, failing to properly taper D.P. off such high opioid doses, and failing to document vital signs. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 149–51; GX 8 at 1352–57; ALJ Ex. 4 at Stip. Y, 259–62.

51. On December 18, 2018, Respondent prescribed D.P. a combination of 280 tablets of 10 mg oxycodone, 309 tablets of 15 mg oxycodone, 325 tablets of 20 mg oxycodone, and 297 tablets of 30 mg oxycodone. ALJ Ex. 4 at Stip. Y, 259–62. This represents an increase in Respondent's opioid prescribing to D.P., which Dr. Munzing testified was ''astronomically high.'' Tr. 149–50. Dr. Munzing testified that in issuing these

prescriptions, Respondent acted outside the standard of care by failing to document a reason to continue to prescribe D.P. this level of opioids, failing to properly taper D.P. off such high opioid doses, and failing to document vital signs. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 151–52; GX 8 at 1447–52; ALJ Ex. 4 at Stip. Y, 259–62.

52. On January 10, 2019, Respondent prescribed D.P. a combination of 245 tablets of 10 mg oxycodone, 270 tablets of 15 mg oxycodone, 285 tablets of 20 mg oxycodone, and 260 tablets of 30 mg oxycodone. ALJ Ex. 4 at Stip. Y, 291–94. Dr. Munzing testified that in issuing these prescriptions, Respondent acted outside the standard of care by failing to document a reason to continue to prescribe D.P. this level of opioids, failing to properly taper D.P. off such high opioid doses, failing to document informed consent, failing to document an appropriate medical examination, and failing to document vital signs. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 152–54; GX 8 at 1480–84; ALJ Ex. 4 at Stip. Y, 291–94.

53. Between December 11, 2018, and April 30, 2019, Respondent consistently prescribed D.P. a combination of at least 245 tablets of 10 mg oxycodone, 270 tablets of 15 mg oxycodone, 285 tablets of 20 mg oxycodone, and 260 tablets of 30 mg oxycodone. ALJ Ex. 4 at Stip. Y, 275–378.

54. On February 11, 2019, Respondent prescribed D.P. a combination of 245 tablets of 10 mg oxycodone, 270 tablets of 15 mg oxycodone, 285 tablets of 20 mg oxycodone, 260 tablets of 30 mg oxycodone, 105 tablets of 10 mg oxycodone, 114 tablets of 15 mg oxycodone, 120 tablets of 20 mg oxycodone, and 114 tablets of 30 mg oxycodone. ALJ Ex. 4 at Stip. Y, 311–18. This amounts to approximately 6,144 MME. Dr. Munzing testified that in issuing these prescriptions, Respondent acted outside the standard of care by failing to document a reason to continue to prescribe D.P. this level of opioids, failing to document the reason for the eight oxycodone prescriptions, failing to properly taper D.P. off such high opioid doses and instead significantly escalating his MME level, failing to document informed consent, failing to document an appropriate medical examination, and failing to document vital signs. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 155–57; GX 8 at 1543; ALJ Ex. 4 at Stip. Y, 327–42, 361–68.

55. Respondent continued this level of prescribing on March 4, 2019, March 13, 2019, and April 15, 2019. ALJ Ex. 4 at Stip. Y, 327–42, 361–68. This amounted to 6,000 MME per day. Tr. 158:3–6. Dr. Munzing testified that Respondent acted outside the standard of care by failing to document a reason to continue to prescribe D.P. this level of opioids. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 157–59; GX 8 at 1607; ALJ Ex. 4 at Stip. Y, 327–42, 361–68.

56. Between April 2019 and June 2019, Respondent prescribed D.P. combinations of 10 mg oxycodone, 15 mg oxycodone, 20 mg oxycodone, and 30 mg oxycodone that caused D.P.'s daily MME to bounce between 4,000 MME and 6,000 MME. Tr. 159:4–19; ALJ Ex. 4 at Stip. Y, 351–423. Dr. Munzing testified that on each occasion, Respondent acted outside the standard of care by failing to document a reason to continue to prescribe D.P. this level of opioids. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 159; ALJ Ex. 4 at Stip. Y, 351–423.

57. On July 8, 2019, Respondent prescribed D.P. a combination of at 233 tablets of 10 mg oxycodone, 265 tablets of 15 mg oxycodone, 115 tablets of 20 mg oxycodone, 103 tablets of 30 mg oxycodone, 100 tablets of 10 mg oxycodone, 111 tablets of 15 mg oxycodone, 270 tablets of 20 mg oxycodone, 240 tablets of 30 mg oxycodone, 14 tablets of oxymorphone 40 mg, and 6 tablets of oxymorphone 40 mg. ALJ Ex. 4 at Stip. Y, 429–38. This is over 6,000 MME per day. Tr. 160:7–23. Dr. Munzing testified that in issuing these prescriptions, Respondent acted outside the standard of care by failing to document a reason to continue to prescribe D.P. this level of opioids. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 160–61; ALJ Ex. 4 at Stip. Y, 429–38.

58. There is a gap in Respondent's medical records for D.P. from June 25, 2019 until September 30, 2019. Tr. 161–162; GX 8 at 1847.

59. Respondent continued to issue prescriptions for 10 mg oxycodone, 15 mg oxycodone, 20 mg oxycodone, and 30 mg oxycodone in July and August 2019. Stip. Y, 424–76. During this time, Respondent acted outside the standard of care by failing to taper D.P.'s opioid levels, which ranged between 3,000 and 6,000 MME. Tr. 163:4–17. Respondent acted outside the standard of care by issuing prescriptions to D.P. without any medical record documentation. Tr. 162–63. Dr. Munzing testified that due to these failures, these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 162–63; ALJ Ex. 4 at Stip. Y, 424–76.

60. UC San Diego doctors described Respondent's opioid prescribing to D.P. as ''massive amounts,'' ''very high amounts,'' and ''exorbitant amounts.'' Tr. 165:2–6. Over time, UC San Diego stabilized D.P.'s multitude of medical conditions and was then able to put him on a steady tapering program which reduced his MME to 1,000 and then down to the 700 MME range. Tr. 165, 167.

61. Respondent acted outside the standard of care by prescribing extremely high doses of opioids without referring D.P. for a mental health evaluation. Tr. 175:12–25.

62. Dr. Munzing testified that the overall care provided by Respondent for D.P. was incredibly dangerous and certainly not within the standard of care. In fact, Dr. Munzing testified D.P. is lucky to be alive. Tr. 176:17–23.

63. Dr. Munzing testified that, based on the extremely high MMEs, the failure to provide a medical justification, and the failure to properly document treatment including vital signs and appropriate physical examinations, all of the stipulated prescriptions Respondent issued to D.P. were issued outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 176–77.

64. Dr. Munzing testified that Respondent acted outside the standard of care in prescribing to P.S. because he found no evidence in the medical records that Respondent had informed consent discussions with P.S. to make him aware of the specific risks from taking high dose opioids, including addiction, overdose or death. Tr. 178, 182.

65. Respondent failed to take or document vital signs in approximately 50% of his visits with P.S. and performed or documented a musculoskeletal examination less than 20% of the time; these were necessary because P.S. was being treated for musculoskeletal complaints with opioid medications. Tr. 183:12–21. Respondent failed to obtain a significant medical history regarding P.S.'s anxiety before

prescribing him anti-anxiety medications, lorazepam and alprazolam, and failed to try non-controlled substances to treat P.S.'s anxiety. Tr. 183–84.

66. Respondent acted outside the standard of care in California by prescribing P.S. high dose opioids, mid-300 MME range, in combination with a benzodiazepine; these prescriptions did not correlate to any significant improvement in P.S.'s condition, but the combination put P.S. at significant risk. Tr. 184–85.

67. On February 17, 2017, Respondent prescribed to P.S. 45 tablets of morphine sulfate ER 30 mg, 45 tablets of morphine sulfate ER 60 mg, and 45 tablets of Dilaudid (hydromorphone), 8 mg and 30 tablets lorazepam 1 mg. This was a dosage of 366 MME. GX 11 at 1; ALJ Ex. 4 at Stip. BB, 1–4; Tr. 185–86. Dr. Munzing testified that 366 MME is classified as very high; four times the CDC's recommended high of 90. Tr. 185:5–15; GX 5.

68. Dr. Munzing testified that in issuing these prescriptions, Respondent acted outside the standard of care by failing to document a reason to prescribe P.S. this level of opioids, failing to document a reason for prescribing the dangerous combination of high dose opioids with a benzodiazepine, failing to document informed consent, failing to document an appropriate medical examination, failing to properly perform a psychiatric examination, and failing to assess the increased risk to P.S. due to his age and history of acute embolism and deep venous thrombosis. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 187–189; GX 10 at 46; ALJ Ex. 4 at Stip. BB, 1–4.

69. Between February 17, 2017, and September 16, 2019, Respondent prescribed to P.S. 45 tablets of morphine sulfate ER 30 mg, 45 tablets of morphine sulfate ER 60 mg, and 45 tablets of hydromorphone 8 mg, and a benzodiazepine (either lorazepam 1 mg or alprazolam 0.5 mg). ALJ Ex. 4 at Stip. BB, 1–175.

70. Based on a review of P.S.'s entire medical record Dr. Munzing testified that Respondent acted outside the standard of care by failing to document a reason to prescribe P.S. this level of opioids, failing to document a reason for prescribing a benzodiazepine, failing to document a reason for prescribing the dangerous combination of high dose opioids with a benzodiazepine, failing to document informed consent, failing to taper P.S. off of high dose opioids, failing to document an appropriate medical examination, failing to properly perform a psychiatric examination, and failing to use a non-benzodiazepine to treat P.S.'s anxiety. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 190–95; ALJ Ex. 4 at Stip. BB, 1–175.

71. P.S. had an aberrant urine drug screen on March 3, 2017, (GX 10 at 67–78) when P.S. tested negative for lorazepam, which was inconsistent with P.S.'s February 17, 2017 lorazepam prescription. Tr. 196–97; ALJ Ex. 4 at Stip. BB, 4. Respondent acted outside that standard of care by failing to address or resolve the aberrant result. Tr. 198–200; *see also, e.g.* GX 10, at 89.

72. P.S. had aberrant urine drug screens on the following dates:

a. April 14, 2017, (GX 10 at 106–08) when P.S. tested negative for lorazepam, which was inconsistent with P.S.'s March 29, 2017 lorazepam prescription. Tr. 200–01; ALJ Ex. 4 at Stip. BB, 8.

b. June 19, 2017, (GX 10 at 195–97) when P.S. tested negative for lorazepam, which was inconsistent with P.S.'s June 5, 2017 lorazepam prescription. Tr. 201–02; ALJ Ex. 4 at Stip. BB, 15.

c. August 7, 2017, (GX 10 at 275–77) when P.S. tested negative for lorazepam, which was inconsistent with P.S.'s July 25, 2017 lorazepam prescription. Tr. 202–03; ALJ Ex. 4 at Stip. BB, 32.

d. September 12, 2017, (GX 10 at 324–26) when P.S. tested negative for alprazolam, which was inconsistent with P.S.'s August 16, 2017 alprazolam prescription. Tr. 203–04; ALJ Ex. 4 at Stip. BB, 40.

e. October 10, 2017, (GX 10 at 359–61) when P.S. tested negative for alprazolam, which was inconsistent with P.S.'s September 12, 2017 alprazolam prescription. Tr. 209–10; ALJ Ex. 4 at Stip. BB, 44. P.S also tested negative for morphine, which was inconsistent with P.S.'s morphine prescriptions on September 12, 2017. Tr. 210:7–12; ALJ Ex. 4 at Stip. BB, 41–43.

f. November 3, 2017, (GX 10 at 389–91) when P.S. tested negative for alprazolam, which was inconsistent with P.S.'s October 23, 2017 alprazolam prescription. Tr. 211–12; ALJ Ex. 4 at Stip. BB, 48. P.S also tested negative for morphine, which was inconsistent with P.S.'s morphine prescriptions on October 23, 2017. Tr. 212:18–23; ALJ Ex. 4 at Stip. BB, 45–47.

g. September 11, 2018, (GX 10 at 754–56) when P.S. tested negative for alprazolam, which was inconsistent with P.S.'s August 28, 2018 alprazolam prescription. Tr. 213; ALJ Ex. 4 at Stip. BB, 114. P.S also tested negative for morphine, which was inconsistent with P.S.'s morphine prescriptions on August 14, 2018. Tr. 213–14; ALJ Ex. 4 at Stip. BB, 111–13.

h. October 3, 2018, (GX 10 at 793–95) when P.S. tested negative for alprazolam, which was inconsistent with P.S.'s September 25, 2018 alprazolam prescription. Tr. 214–15; ALJ Ex. 4 at Stip. BB, 122. P.S also tested negative for morphine, which was inconsistent with P.S.'s morphine prescriptions on September 25, 2018. Tr. 215:6–11; ALJ Ex. 4 at Stip. BB, 119–21. P.S. tested positive for alcohol, which is an aberrant result because the P.S.'s Controlled Substance Agreement stated a patient should not be drinking alcohol with these medications. There is an increased risk to a patient for overdose or death when combining alcohol and controlled substance medications. Tr. 217:7–25.

i. December 21, 2018, (GX 10 at 911–13) when P.S. tested negative for alprazolam, which was inconsistent with P.S.'s December 10, 2018 alprazolam prescription. Tr. 222–23; ALJ Ex. 4 at Stip. BB, 132. P.S also tested negative for morphine, which was inconsistent with P.S.'s morphine prescriptions on December 10, 2018. Tr. 212:18–23; ALJ Ex. 4 at Stip. BB, 133–35.

j. March 26, 2019, (GX 10 at 1105–07) when P.S. tested negative for alprazolam, which was inconsistent with P.S.'s March 1, 2019 alprazolam prescription. Tr. 224; ALJ Ex. 4 at Stip. BB, 144.

78. Respondent acted outside that standard of care by failing to address, resolve, and document each of the above aberrant drug screen results. Tr. 198–204, 211, 213–14, 218–21, 224; see also, *e.g.* GX 10 at 807–11.

79. Dr. Munzing testified that P.S.'s numerous aberrant drug screens and Respondent's failure to address or resolve those aberrant drug screens contributed to his opinion that Respondent's prescriptions to P.S. were outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 200–04, 211, 222.

80. Respondent acted outside the standard of care in prescribing controlled substances to J.K. by failing to provide appropriate treatment and examinations for her migraine pain. Respondent prescribed controlled substance but failed to do a proper neurological examination, including imaging scans, CT, or MRI, to ensure that other diagnoses are not being missed. Tr. 229–31.

81. Responded acted outside the standard of care when prescribing the

relevant controlled substances to J.K. by failing to take a comprehensive medical history including an examination of mental health issues, failing to address and document J.K.'s use of alcohol and other drugs in the past, failing to perform a neurological exam or refer to a neurological subspecialist for J.K.'s migraine treatment, failing to take vital signs, and prescribing controlled substances without resolving numerous aberrant drug screens. Tr. 232–33.

82. Respondent's medical records for J.K. did not document that she was being treated for cancer pain, as her cancer treatment ended in 2014. Tr. 233–34.

83. Dr. Munzing testified that Respondent acted outside the standard of care when prescribing opioids to J.K. by failing to properly document justification for the high dosages of opioids he prescribed to J.K. Tr. 234:2–7.

84. Dr. Munzing testified that Respondent acted outside the standard of care when prescribing opioids and benzodiazepines to J.K. by failing to obtain and document proper informed consent for the risks of high dose opioids (300 to 400 MME), as well as the increased risk posed by Respondent prescribing a combination of opioids and benzodiazepines. Tr. 235:7–22.

85. On November 28, 2016, Respondent prescribed to J.K. a fentanyl patch, 75 micrograms per hour (change every 4 hours), 180 tablets of Percocet 10/325 mg, and 30 tablets of Soma 350 mg. This is 366 MME. GX 13 at 1; ALJ Ex. 4 at Stip. EE, 1–3; Tr. 236–37. Dr. Munzing testified that 366 MME is classified as very high, four times the recommended CDC limit of 90. Tr. 185, 237; GX 5.

86. Dr. Munzing testified that in issuing the November 28, 2016 prescriptions to J.K., Respondent acted outside the standard of care by failing to document a reason to prescribe J.K. this level of opioids, failing to document a reason for prescribing the dangerous combination of high dose opioids with Soma, failing to document informed consent, and failing to document an appropriate medical examination. Dr. Munzing also testified that J.K.'s expressed pain level of 4 did not justify this high dose of opioids and possibly not even a low dose of opioids. Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 235–41; GX 13 at 1; GX 12 at 3–8; ALJ Ex. 4 at Stip. EE, 1–3.

87. On January 19, 2017, Respondent prescribed J.K. a fentanyl patch with 12 micrograms per hour, a fentanyl patch with 50 micrograms per hour, a fentanyl patch with 75 micrograms per hour, 90 tablets of Percocet 10/325 mg (two week supply), and 15 tablets of Soma 350 mg. GX 13 at 2; ALJ Ex. 4 at Stip. EE, 4–8. This was 440 MME. Tr. 242–43; GX 12 at 30. Respondent failed to document a justification for the increase in opioid medication prescribed to J.K. GX 12 at 29–34; Tr. 242–43. Dr. Munzing testified that Respondent failed to perform an appropriate examination, failed to document J.K.'s present illness, and put J.K. at much higher risk based on minimal information. *Id.* As such, Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. *Id.;* ALJ Ex. 4 at Stip. EE, 4–8.

88. Respondent prescribed J.K. a combination of fentanyl patch, Percocet 10/325 mg, and Soma 350 mg, on a number of occasions between November 28, 2016, and March 14, 2017. ALJ Ex. 4 at Stip. EE, 1–14; GX 13 at 1–5. Dr. Munzing testified, based on a review of all of J.K.'s medical records, that on each occasion, Respondent failed to justify the very high doses of opioids prescribed to J.K. and failed to justify the dangerous combination of opioids with Soma. As such, Dr. Munzing testified that these prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. *Id.;* Tr. 240–46.

89. On August 18, 2017, Respondent prescribed J.K. 180 tablets of Percocet 10/325 mg, 60 tablets of oxymorphone ER 40 mg, 60 tablets of OxyContin 40 mg, and 60 tablets of Soma, 350 mg. ALJ Ex. 4 at Stip. EE, 19–22; GX 13 at 9. This is approximately 450 MME. Tr. 244:1–15.

90. Dr. Munzing testified that in issuing the August 18, 2017 prescriptions to J.K., Respondent acted outside the standard of care by failing to document a reason to prescribe J.K. this level of opioids, failing to taper J.K. off high dose opioids and in fact increasing her dosage, failing to document a reason for prescribing the dangerous combination of high dose opioids with Soma, failing to document informed consent, failing to document an appropriate medical examination, and a failing to document a justification for switching J.K. from a fentanyl patch to oxymorphone and OxyContin. As such, Dr. Munzing testified that the August 18, 2017 prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 243–47; GX 13 at 9; GX 12 at 109–16; ALJ Ex. 4 at Stip. EE, 19–22.

91. On November 10, 2017, Respondent prescribed J.K. 180 tablets of Percocet 10/325 mg, 60 tablets of oxymorphone ER 40 mg, 60 tablets of OxyContin 40 mg, and 90 tablets of Soma 350 mg. ALJ Ex. 4 at Stip. EE, 23–26; GX 13 at 10–12. This was approximately 450 MME. Tr. 244, 247.

92. Dr. Munzing testified that in issuing the November 10, 2017 prescriptions to J.K., Respondent acted outside the standard of care by failing to document a reason to prescribe J.K. this level of opioids, failing to taper J.K. off high dose opioids, failing to document a reason for prescribing the dangerous combination of high dose opioids with Soma, and failing to document informed consent. Dr. Munzing also testified that J.K.'s expressed pain level of 4 did not justify this high dose of opioids and possibly not even a low dose of opioids. As such, Dr. Munzing testified that the November 10, 2017 prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 247–48; GX 13 at 10–12; GX 12 at 129–35; ALJ Ex. 4 at Stip. EE, 23–26.

93. On January 8, 2018, Respondent prescribed J.K. 180 tablets of Percocet 10/325 mg, 60 tablets of oxymorphone ER 40 mg, 60 tablets of OxyContin 40 mg, and 90 tablets of Soma 350 mg. ALJ Ex. 4 at Stip. EE, 29–32; GX 13 at 14–16. This was approximately 450 MME. Tr. 244, 248.

94. Dr. Munzing testified that in issuing the January 8, 2018 prescriptions to J.K., Respondent acted outside the standard of care by failing to document a reason to prescribe J.K. this level of opioids, failing to taper J.K. off high dose opioids, failing to document a reason for prescribing the dangerous combination of high dose opioids with Soma, failing to provide an objective assessment and plan, failing to record vital signs, and failing to document informed consent. Dr. Munzing also testified that Respondent failed to record a pain level for J.K. As such, Dr. Munzing testified that the January 8, 2018 prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 248–49; GX 13 at 10–12; GX 12 at 144–48; ALJ Ex. 4 at Stip. EE, 29–32.

95. On February 9, 2018, Respondent prescribed J.K. 180 tablets of Percocet 10/325 mg, 60 tablets of oxymorphone ER 40 mg, 60 tablets of oxycodone 36 mg, and 120 tablets of Soma, 350 mg. ALJ Ex. 4 at Stip. EE, 33–36; GX 13 at 17–20. This is 430 MME. Tr. 250:14–18.

96. Dr. Munzing testified that in issuing the February 9, 2018 prescriptions to J.K., Respondent acted outside the standard of care by failing to document a reason to prescribe J.K. this level of opioids, failing to taper J.K. off high dose opioids, failing to document a reason for prescribing the dangerous combination of high dose opioids with Soma, failing to record vital signs, failing to document an objective assessment, failing to provide information about alcohol use, failing to document the subjective/objective assessment and plan in the medical records, failing to document reasoning for changing J.K.'s opioid medications, and failing to document informed consent. As such, Dr. Munzing testified that the February 9, 2018 prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 249–55; GX 13 at 17–20; GX 12 at 149–56; ALJ Ex. 4 at Stip. EE, 33–36.

97. On October 16, 2018, Respondent prescribed J.K. 10 fentanyl patches 75 mg, 120 tablets of morphine sulfate IR 15 mg, 120 tablets of Soma 350 mg, 180 tablets of Percocet 10/325 mg, and 60 tablets of morphine sulfate ER 60 mg. ALJ Ex. 4 at Stip. EE, 54–57; GX 13 at 36–37. This is 330 MME. Tr. 255:9–23.

98. Dr. Munzing testified that in issuing the October 16, 2018 prescriptions to J.K., Respondent acted outside the standard of care by failing to document a reason to prescribe J.K. this level of opioids, failing to taper J.K. off high dose opioids despite J.K. having left-over opioids from previous prescriptions, failing to document a reason for prescribing the dangerous combination of high dose opioids with Soma, failing to record vital signs, failing to document an appropriate examination, failing to address the fact that J.K. indicated she is not following Respondent's dosing instructions as she was taking left-over medications, failing to provide information about alcohol use, failing to provide an objective assessment or plan, failing to document informed consent, and for prescribing controlled substance despite J.K. having possible suicidal ideations. As such, Dr. Munzing testified that the October 16, 2018 prescriptions were written outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 255–61; GX 13 at 36–37; GX 12 at 272–75; ALJ Ex. 4 at Stip. EE, 54–57.

99. [J.K. had aberrant urine drug screens on the following dates:]

a. April 27, 2017, (GX 12 at 62–64) when J.K. tested positive for THC and amphetamines, neither of which were prescribed to J.K. by Respondent. Tr. 261–66.

b. May 12, 2017, (GX 12 at 74–76) when J.K. tested positive for amphetamines, which were not prescribed to J.K. by Respondent. Tr. 267–68.

c. September 15, 2017, (GX 12 at 109–11) when J.K. tested positive for amphetamines, which were not prescribed to J.K. by Respondent. Tr. 269:5–13.

d. February 9, 2018, (GX 12 at 159–61) when J.K. tested positive for THC and amphetamines, neither of which were prescribed to J.K. by Respondent. Tr. 270–71.

e. March 19, 2018, (GX 12 at 180–82) when J.K. tested positive for THC and amphetamines, neither of which were prescribed to J.K. by Respondent. Tr. 273:5–14.

f. June 4, 2018, (GX 12 at 221–23) when J.K. tested positive for THC and amphetamines, neither of which were prescribed to J.K. by Respondent. Tr. 274, 276.

g. July 31, 2018, (GX 12 at 241–43) when J.K. tested positive for THC and amphetamines, neither of which were prescribed to J.K. by Respondent. Tr. 277–78.

100. Respondent acted outside that standard of care by failing to address or resolve the above aberrant results. Tr. 198–200, 247–50, 266–67, 268–73, 277–79; GX 12 at 67–70, 80–83, 125–28, 165–68, 185–92, 227–31, 247–50.

101. Dr. Munzing testified that each of J.K.'s [unresolved] aberrant drug screens contributed to his opinion that Respondent's prescriptions to J.K. were outside the usual course of professional practice and not for a legitimate medical purpose. Tr. 267, 279.

102. Based on Dr. Munzing's review of J.K.'s oncology records, he was able to confirm that Respondent's opioid prescriptions to J.K. were not related to [treatment of end stage cancer]. Tr. 279–81.

103. Dr. Munzing testified that Respondent's prescribing to D.L. did not meet the standard of care in California. The controlled substance prescriptions issued to D.L. were not medically justified as prescribed and were not issued in the usual course of professional practice. Further, Respondent's medical histories for D.L. were not consistent with the standard of care due to their brevity and lack of detail. The histories did not include even limited information regarding a mental health or alcohol and drug use. The medical history also lacks necessary details regarding any chronic medical problems D.L. has and how they might interact with the controlled substances prescribed by Respondent. Tr. 282–83.

104. On January 23, 2018, Respondent prescribed D.L. 60 tablets of lorazepam 1 mg, 240 tablets of Percocet 10/325 mg, 60 tablets of morphine sulfate ER 100 mg, 90 tablets of morphine sulfate IR 30 mg, 21 tablets of oxymorphone HCl 5 mg, and 30 tablets Lunesta 3 mg. ALJ Ex. 4 at Stip. HH, 1–6; GX 15 at 12–17. This is 455 MME. Tr. 285–86.

105. Lunesta poses a risk of habit forming addiction. It is also a respiratory depressant, which, when added to an opioid prescription, increases the risk of overdose or overdose death. Tr. 286:13–21.

106. Combining opioid, Lunesta and benzodiazepine prescriptions creates an even greater risk to a patient due to the combination of multiple respiratory depressants. Tr. 287:1–11.

107. Dr. Munzing testified based on his review of D.L.'s medical records that the high MME, the combination of the controlled substances, and the risks associate with prescribing these combinations to an elderly patient makes the January 23, 2018 prescriptions issued to D.L. outside the usual course of professional practice and not for a legitimate medical purpose. Tr. 287; ALJ Ex. 4 at Stip. HH, 1–6; GX 15 at 12–17.

108. On February 23, 2018, Respondent prescribed to D.L. 60 tablets of lorazepam 1 mg, 240 tablets of Percocet 10/325 mg, 60 tablets of morphine sulfate ER 100 mg, 120 tablets of morphine sulfate IR 30 mg, and 30 tablets Lunesta 3 mg. ALJ Ex. 4 at Stip. HH, 7–11; GX 15 at 18–22; Tr. 288:1–8.

109. In issuing the February 23, 2018 prescriptions to D.L., Respondent acted outside the standard of care by failing to justify the increase in morphine sulfate 30 mg from 90 to 120 tablets, failing to document an appropriate examination, failing to justify the overall level of opioid prescribing to D.L., failing to justify the lorazepam prescription, and failing to document informed consent for the significant risk to the patient with this combination of controlled substances. As such, Dr. Munzing testified that the February 23, 2018 prescriptions to D.L. by Respondent were prescribed outside the usual course of professional practice and were not for a legitimate medical purpose. ALJ Ex. 4 at Stip. HH, 7–11; GX 15 at 18–22; Tr. 289–90; GX 14 at 355–60.

110. On March 23, 2018, Respondent prescribed to D.L. 60 tablets of lorazepam 1 mg, 240 tablets of Percocet 10/325 mg, 60 tablets of morphine sulfate ER 100 mg, 120 tablets of morphine sulfate IR 30 mg, and 30

tablets of Lunesta 3 mg. ALJ Ex. 4 at Stip. HH, 12- 16; GX 15 at 23–27.

111. In issuing the March 23, 2018 prescriptions to D.L., Respondent acted outside the standard of care by failing to justify in the medical records the high level of opioid prescribing to D.L., failing to document a justification for the combination of high dose opioids with the Lunesta and the benzodiazepine, failing to document a physical exam and the fact that D.L. described her pain level only at a 5. As such, Dr. Munzing testified that the March 23, 2018 prescriptions to D.L. by Respondent were prescribed outside the usual course of professional practice and were not for a legitimate medical purpose. ALJ Ex. 4 at Stip. HH, 12–16; GX 15 at 23–27; Tr. 289–90; GX 14 at 368–73.

112. On May 4, 2018, Respondent prescribed to D.L. 60 tablets of lorazepam 1 mg, 210 tablets of Percocet 10/325 mg, 60 tablets of morphine sulfate ER 100 mg, 120 tablets of morphine sulfate IR 30 mg, and 30 tablets Lunesta 3 mg. This was approximately 420 MME. ALJ Ex. 4 at Stip. HH, 17–21; GX 15 at 28–31; Tr. 293–294.

113. In issuing the May 4, 2018 prescriptions to D.L., Respondent acted outside the standard of care by failing to justify in the medical records the high level of opioid prescribing to D.L., failing to document a justification for the combination of high dose opioids with the Lunesta and the benzodiazepine, failing to make any efforts to taper D.L.'s morphine levels, and in fact, increasing those levels since 2016, and failing to document a physical exam. As such, Dr. Munzing testified that the May 4, 2018 prescriptions issued to D.L. by Respondent were outside the usual course of professional practice and were not for a legitimate medical purpose. ALJ Ex. 4 at Stip. HH, 17–21; GX 15 at 28–31; GX 14 at 405–09; Tr. 294.

114. On May 31, 2018, Respondent prescribed to D.L. 240 tablets of Percocet 10/325 mg, 60 tablets of morphine sulfate ER 100 mg, 120 tablets of morphine sulfate IR 30 mg. This was approximately 435 MME. ALJ Ex. 4 at Stip. HH, 22–24; GX 15 at 32–34; Tr. 295.

115. In issuing the May 31, 2018 prescriptions to D.L., Respondent acted outside the standard of care by failing to justify in the medical records the increased number of Percocet tablets, failing to justify in the medical records the high level of opioid prescribing to D.L. particularly because D.L.'s pain was only at a pain level of 5 out of 10, failing to taper D.L.'s high level of opioids, and failing to document a physical exam. As such, Dr. Munzing testified that the May 31, 2018 prescriptions issued to D.L. by Respondent were outside the usual course of professional practice and were not for a legitimate medical purpose. ALJ Ex. 4 at Stip. HH, 22–24; GX 15 at 32–34; GX 14 at 440–45; Tr. 295–98.

116. On July 31, 2018, December 4, 2018, and January 3, 2019, Respondent prescribed to D.L. 60 tablets of 210 tablets of Percocet 10/325 mg, 60 tablets of morphine sulfate ER 100 mg, 120 tablets of morphine sulfate IR 30 mg, and 30 tablets Lunesta 3 mg. On July 31, 2018 (OK to fill August 9, 2018), Respondent prescribed to D.L. 60 tablets of 210 tablets of Percocet 10/325 mg, 60 tablets of morphine sulfate ER 100 mg, 120 tablets of morphine sulfate IR 30 mg. ALJ Ex. 4 at Stip. HH, 25–39.

117. In issuing these prescriptions to D.L., Respondent acted outside the standard of care by failing to justify in the medical records the high level of opioid prescribing, failing to document a justification for the combination of high dose opioids with the Lunesta, failing to make any efforts to taper D.L.'s morphine levels, failing to document vital signs for each visit, and failing to document a physical exam. As such, Dr. Munzing testified these prescriptions to D.L. were issued outside the usual course of professional practice and were not for a legitimate medical purpose. ALJ Ex. 4 at Stip. HH, 25–39; Tr. 298–301.

118. D.L. had an aberrant urine drug screen on March 23, 2018, (GX 14 at 379–81) when D.L. tested negative for oxycodone, which was inconsistent with D.L.'s February 23, 2018 oxycodone prescription. Tr. 302; ALJ Ex. 4 at Stip. HH, 9. D.L. also tested negative for lorazepam, which was inconsistent with D.L.'s lorazepam prescription on February 23, 2018. Tr. 302; ALJ Ex. 4 at Stip. HH, 7. Respondent acted outside that standard of care by failing to address or resolve the aberrant results. Tr. 302–03; GX 14 385–90.

119. D.L. had an aberrant urine drug screen on April 20, 2018, (GX 14 at 395–97) when D.L. tested negative for oxycodone, which was inconsistent with D.L.'s March 23, 2018 oxycodone prescription. Tr. 303; ALJ Ex. 4 at Stip. HH, 14. D.L. also tested negative for lorazepam, which was inconsistent with D.L.'s lorazepam prescription on March 23, 2018. Tr. 303–04; ALJ Ex. 4 at Stip. HH, 12. Respondent acted outside that standard of care by failing to address or resolve the aberrant results. Tr. 304–05; GX 405–09.

120. D.L. had an aberrant urine drug screen on January 31, 2019, (GX 14 at 577–79) when D.L. tested negative for oxycodone, which was inconsistent with D.L.'s January 3, 2019 oxycodone prescription. Tr. 305–06; ALJ Ex. 4 at Stip. HH, 38. Respondent acted outside that standard of care by failing to address or resolve the aberrant results. Tr. 307–08; GX 588–93, 609–13.

121. Dr. Munzing testified that D.L.'s aberrant drug screens and Respondent's failure to address or resolve the aberrant drug screens were facts that contributed to his opinion that Respondent's prescriptions to D.L. were outside the usual course of professional practice and were not for a legitimate medical purpose. Tr. 211, 303.

122. Due to the importance of ensuring a patient has given informed consent regarding treatment, including prescriptions for controlled substances, the standard of care in California requires that practitioners document in the medical records specifically what was discussed with a patient and specifically what risks and benefits the patient was informed of prior to the patient's agreement to the treatment or receipt of controlled substances. Tr. 460–62.

123. Respondent testified that in his medical practice, his documentation of certain areas of patient care did not meet the standard of care. Tr. 488, 490.

124. Patient D.P. testified that, when seen by nurse practitioners at Respondent's practice, they did not necessarily discuss the risks or issues with taking high dose opioid medications. Tr. 524:12–22.

125. Patient D.P. testified that he did not have his vital signs taken at every medical visit with Respondent. Tr. 525:8–11.

126. Patient D.P. testified that Respondent did not conduct a full physical exam at each of D.P. visits. Tr. 525:15–20.

127. Patient D.P. testified he was able to calculate the MME for his opioid prescriptions. He calculated that his MME with the doctor treating him prior to Respondent was between 4,500 and 4,800. Tr. 534–35.

128. Patient D.P. testified he did not know how high his MME level was with the opioid medications prescribed by Respondent. Tr. 535:9–12.

129. Patient D.P. testified his knew his current MME level to be 752. Tr. 535:16–17.

130. Respondent testified he suspected J.K. to have an undiagnosed brain injury, and he admitted that he

did not assess or treat the brain injury.[*X] Tr. 554:2–16.

131. Dr. Mark Wiederhold, Dr. Joseph Shurman, and Respondent all confirmed that the standard of care requires a doctor to have complete and accurate documentation of the patient's treatment in the patient's medical records. Tr. 595, 719–20, 779.

132. Dr. Mark Wiederhold, Dr. Joseph Shurman, and Respondent confirmed that the standard of care requires patient medical records to contain sufficient documentation to justify controlled substance prescriptions issued to that patient. Tr. 595, 720, 779–80.

133. Dr. Mark Wiederhold, Dr. Joseph Shurman, and Respondent confirmed that the standard of care requiring complete and accurate documentation in a patient's medical record is for the protection, not only of the patient, but for the protection of the doctor as well. Tr. 595, 720, 780.

134. Dr. Mark Wiederhold, Dr. Joseph Shurman, and Respondent confirmed that a doctor is ultimately responsible for preparing complete and accurate medical records. Tr. 595–96, 720, 780.

135. Dr. Mark Wiederhold, Dr. Joseph Shurman, and Respondent confirmed that doctors are responsible for reviewing their patient's medical records to assure that the records created by the doctor are accurate and complete. Tr. 596, 780.

136. Dr. Joseph Shurman testified that it is much easier to taper off immediate release opioids than off the extended release opioids. Tr. 685:16–20.

137. Ultimately, Dr. Shurman testified he spent approximately 10 hours reviewing over 4,000 pages of medical records in this case. Tr. 719:7–15; GX 8, 10, 12, 14.

138. Dr. Joseph Shurman confirmed that doctors must justify their use of high dose opioids in the medical records. Tr. 721:1–4.

139. On the basis of his review of the D.P. medical records, Dr. Shurman found no evidence that Respondent documented any discussions he had with D.P. regarding the various risks associated with taking high dose opioids, including the risk of death. Tr. 722–24.

140. Dr. Shurman testified that a long term goal for a patient on high-dose opioids would be to attempt to gradually taper the patient off the high-dose opioids. Tr. 725:12–16.

141. Dr. Shurman testified that the standard of care for a pain doctor in San Diego is measured by what a reasonable pain specialist would do in the San Diego area. Tr. 733:13–25.

142. Dr. Munzing, Respondent's two experts, and Respondent all agreed that the standard of care in California requires sufficient documentation in the medical record to justify controlled substance prescriptions. Tr. 89–90, 245, 595, 720, 779–80.

143. In May 2019, D.P. was seen by Respondent or someone in Respondent's office on a weekly basis. Tr. 782:19–22. D.P. went to Respondent's office on May 21, 2019, May 29, 2019, June 4, 2019, June 11, 2019, June 17, 2019, and June 25, 2019. Tr. 782–83.

144. D.P. would notify Respondent if D.P. had any problems filling any of his prescriptions. Tr. 783:2–5.

145. In August 2019, D.P.'s pharmacy began to severely restrict his ability to fill oxycodone prescriptions at that pharmacy. Tr. 783:6–10; GX 9 at 397.

146. As of August 14, 2019, the pharmaceutical distributor Cardinal would not replenish the Respondent's oxycodone prescriptions issued to D.P. GX 9 at 397; Tr. 784–85.

147. Due to Cardinal's refusal to replenish Respondent's oxycodone prescriptions to D.P., the pharmacy would only fill a 48–72 hour prescription for all four oxycodone prescriptions issued by Respondent. *Id.*

Analysis

Findings as to Allegations

The Government alleges that the Respondent's COR should be revoked and any applications should be denied, because as recently as September 16, 2019, Respondent violated federal and California law by issuing prescriptions for controlled substances outside the usual course of professional practice and not for a legitimate medical purpose. ALJ Ex. 1, p. 3, ¶ 6. The Government further alleges that the Respondent's conduct reflects negative experience in prescribing with respect to controlled substances under 21 U.S.C. 823(f)(2), and shows that Respondent has failed to comply with applicable federal and state laws relating to controlled substances under 21 U.S.C. 823(f)(4). ALJ Ex. 1, p. 2, ¶ 2.

In the adjudication of a revocation or suspension of a DEA COR, the DEA bears the burden of proving that the requirements for such revocation or suspension are satisfied. 21 CFR 1301.44(e).[*Y]

California Law

The applicable laws in this case include: [*Z] Cal. Health & Safety Code § 11153(a), requiring that a ''prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner practicing in the usual course of his or her professional practice;'' Cal. Bus. & Prof. Code § 2242(a) which includes in the definition of unprofessional conduct subject to sanction, ''[p]rescribing, dispensing, or furnishing [controlled substances] without an appropriate prior examination and a medical indication''); and Cal. Bus. & Prof. Code § 725(a), which includes in the definition of unprofessional conduct subject to sanction, ''[r]epeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs . . . .''

Failure To Maintain Complete and Accurate Records

[The ''Guide to the Laws Governing the Practice of Medicine by Physicians and Surgeons,'' requires that a practitioner ''keep accurate and complete records, including but not limited to, records of the patient's medical history, physical examinations of the patient, the treatment plan objectives and the treatments given, and the rationale for any changes in treatment.'' GX 3, at 59. Not surprisingly, the failure to maintain accurate and complete patient records itself is outside the usual course of professional practice and represents a violation of the California standard of care. Tr. 89.] The Respondent concedes, [though not unequivocally,] that he failed to maintain complete and accurate patient charts [in ''some areas,''] which he agreed is required by the standard of care. Tr. 488, 779. Beyond the lack of detail, there is evidence of missing records. He has acknowledged [at least some recordkeeping] failures, has taken steps to educate himself as to this critical aspect of the standard of care, and has credibly vowed to correct this failure. Tr. 822–24; RX W.

Dr. Munzing's opinions and conclusions regarding the Respondent's failure to appropriately document within the charts are fully credible. [Dr. Munzing opined that to meet the standard of care in California, a provider must ensure that the medical history, examination, other evaluations, treatment plans, objectives, informed consent, treatments, medications,

[*X] This fact is not material to my decision in this matter; it appears to assert failures in Respondent's medical treatment of J.K. that extend beyond Respondent's failures with regard to prescribing controlled substances.

[*Y] Remaining text moved to the Sanctions section *infra* or omitted for brevity and clarity.

[*Z] Omitted text pursuant to *supra* n.*D.

rationale for prescribing, and agreement with the patient are well-documented in the medical records. Tr. 89–90. He further testified that the standard of care required the resolution of aberrant drug screens to be well documented before continuing to prescribe. Tr. 99, 310–11. Dr. Munzing repeatedly opined that Respondent acted beneath the standard of care with regard to documentation in many of the categories where documentation was required for each of the four individuals. For D.P. alone, Dr. Munzing testified that the documented medical history was ''actually pretty poor,'' Tr. 125, that ''the documentation was far below what was necessary [to] justify the incredibly high dosing,'' Tr. 126, ''there's no vital signs, there's no examination, there's [a] limited amount of information . . . [and] the documentation is inadequate . . . and we still don't have an informed consent.'' Tr. 132, 154.]

I find that the Government has proven the allegations as to the Respondent's failure to appropriately document within the patients' medical records as to each of the subject patients.[43] The failure to document is closely related to a practitioner's responsibility to establish informed consent.*[AA]

The Government expert, Dr. Munzing, appropriately based many of his opinions on the absence of supporting notes in the patient chart, applying the truism, ''if it is not documented, it did not happen.'' Tr. 406. [Dr. Munzing testified, that ''[i]f one doesn't document something and there's no other way to verify it, then you can't necessarily infer that it's happened.'' Tr. 405–06. This opinion is consistent with prior DEA decisions, stating, based on credible expert testimony, that ''a physician may not expect to vindicate himself through oral representations at the hearing about his compliance with the standard of care that were not documented in appropriately maintained patient records.'' *Lesly Pompy, M.D.,* 84 FR 57749, 57760 (2019). The RD stated that, because in this case there was] credible testimony from patients and credible testimony from the Respondent regarding aspects of undocumented but otherwise appropriate treatment protocol, [the ALJ was] not prepared to accept the blanket conclusion that because Respondent failed to include treatment notes in the record, such treatment was not provided.[44] [I do not agree with the ALJ's suggestion that because a few undocumented actions were corroborated by testimony, all of the undocumented actions must have occurred in accordance with Respondent's testimony. Here, the testimony from the two testifying patients was limited and corroborated only a few of the undocumented actions, such as obtaining informed consent. The vast majority of Respondent's actions remained uncorroborated by either documentary evidence or testimony.]

The Government argues that the failure to document alone renders the resultant prescriptions illegitimate under the standard of care, and therefore unjustified. Although the Respondent may indeed have performed certain treatment protocols that were not documented in the medical records, I accept the Government's conclusion that the failure to document alone violates the standard of care. The Government also alleges a number of clinical failings by the Respondent. These will be addressed as well.

Discussion as to Patient D.P.*[BB] [45]

The major dispute between the parties regarding D.P. was the Respondent's failure to titrate D.P. from the astronomical levels of opioids on which D.P. came to the Respondent, 3,000 MME per day. As D.P. was a returning patient and well-known to the Respondent, the Respondent decided to provide treatment even though he had never treated a patient who was prescribed such high levels of opioids. The Respondent and his expert, Dr. Shurman, both recognized the importance of reducing D.P.'s MME. D.P. testified that he was ''reluctan[t]'' to lower his dosage because he was functioning pretty well and his pain range was between a two-to-four out of ten. Tr. 520. The Respondent testified that D.P. did not tolerate titration, either suffering withdrawal or manifesting physical reactions when attempts were made. The Respondent attempted alternative treatment, and took positive measures, such as providing D.P. with Narcan, but ultimately decided to continue D.P. on the opioid medication regimen. Additionally, there was an admission by D.P. to the Respondent that he had taken medication not as prescribed. An insurance company stepped in and greatly restricted the pharmacy's ability to fill the subject prescriptions. Rather than re-evaluating his treatment strategy, the Respondent adjusted his prescribing schedule to work around that restriction. Ultimately, although Sharp Hospital's attempt at titration failed as too rapid, UC San Diego Pain Management successfully titrated D.P. down to 700 MME.*[CC]

[Dr. Shurman and Dr. Munzing both testified that the standard of care required Respondent to try to taper down D.P.'s dosage slowly. Tr. 146–48, 653–54. Instead of attempting titration as required by the standard of care], the patient chart reveals a sporadic treatment strategy, with MME levels [first increasing] and then alternating between 3,500 and 6,000 MMEs.*[DD] [Dr. Munzing testified that Respondent's prescribing was beneath the standard of care because ''rather than tapering, [he] episodically increases the dosages,'' and there was no documented titration plan. Tr. 137, 145–46. Dr. Shurman excused the high MME levels Respondent prescribed to D.P. without titrating because he concluded Respondent's monitoring of D.P. was sufficient to ensure D.P. remained relatively safe. Tr. 658. This position is not convincing over Dr. Munzing's credible testimony. I cannot find that monitoring, assuming for the sake of argument that it was sufficient, can overcome Respondent's failure to document medical justification for prescriptions as high as 6,000 MME and failure to document a treatment plan for titration. Dr. Munzing testified that these levels were the highest MME that he had ever seen. Tr. 117. He further described this level of prescribing to be ''incredibly dangerous.'' Tr. Tr. 177.]

I find that the evidence supports [Dr. Munzing's opinion] that the Respondent's [prescribing to] D.P. was dangerous and outside the standard of care. Dr. Munzing's opinions relating to the Respondent's evaluation and monitoring of D.P. and the Respondent's overall [prescribing to] D.P. as being outside the standard of care are accepted.[46]

The Government has sustained its burden as to the allegations relating to the Respondent's [issuance of the prescriptions at issue to] D.P.

[43] [Omitted for brevity and relevance.]

*[AA] Remaining text omitted for legal clarity.

[44] [Text from the body and from the footnote omitted for legal clarity.]

*[BB] The RD included an extensive write up of the OSC's allegations pertaining to each of the four individuals at issue prior to discussing each individual. The allegations are set forth clearly in the OSC, *see* ALJ Ex. 1, and are summarized above; therefore, for brevity, I have omitted each of the four sections outlining the allegations pertaining to each of the four individuals. The ALJ's analysis of those allegations remains.

[45] [Omitted pursuant to n.*BB.]

*[CC] Some text has been moved or omitted from this paragraph for clarity.

*[DD] Sentence relocated and additional text omitted for clarity.

[46] Although disputed during the hearing, even with the use of oximetrics at visits, I accept Dr. Munzing's opinion that vital signs should have been taken at each of D.P.'s visits, due to the high levels of MME and his concurrent medical issues.

Discussion as to Patient J.K.

There were several disputes as to the propriety of [the prescriptions issued to] J.K. Again, Dr. Munzing's conclusions are based on his review of the medical chart. Dr. Munzing criticized Respondent for failing to order a neurological exam to determine if J.K.'s migraines could be caused by a tumor or other organic issue. This was confronted by the Respondent's memory, undocumented in the chart [and not supported by other testimony or evidence], that J.K. had a ''workup with a neurologist'' in the past. The Respondent had seen J.K. when he worked for a medical group prior to reopening his own practice. It seems unusual that the Respondent did not obtain J.K.'s medical records from the prior group, which requires the tribunal to assume that she had this prior workup. I will give him the benefit of the doubt that he properly evaluated her need for further testing.*[EE]

The next controversy relates to the Respondent's use of opioids to treat intractable migraines, which Dr. Munzing characterized as being beneath the standard of care [because ''opioids are not generally a very successful treatment for chronic headaches.'' Tr. 231.] Dr. Shurman presented the opinion that some physicians, including himself, believe opioids are an appropriate treatment for migraines within the standard of care. The Respondent testified that he treated J.K. with Botox, but her insurance eventually failed to cover these injections. Without further detail or explanation from the experts, I [decline to decide whether or not the prescribed opioids were appropriate to treat J.K. migraines.] *[FF]

The next dispute relates to Dr. Munzing's assertion that J.K.'s ongoing pain could not be attributed to cancer pain as J.K. had been cancer free for four years. The Respondent counters that chemotherapy can produce residual pain syndromes, which can extend after treatment has ended. Dr. Munzing did not address whether the treatment for cancer can produce ongoing pain issues. Therefore, I credit the Respondent's explanation. [However, I also credit Dr. Munzing's testimony that regarding cancer pain, ''[t]here really wasn't anything in [J.K.'s medical records]. The focus of the treatment was not anything related to cancer per se.'' Tr. 233–34. To prescribe to J.K. within the standard of care for pain stemming from cancer or cancer treatment, Dr. Munzing testified that Respondent's ''medical history certainly should have included more specifics in regards to the diagnosis of breast cancer.'' Tr. 234.]

The next controversy relates to J.K.'s abnormal urine drugs screens (UDS). J.K.'s UDS failed to reveal the fentanyl she had been prescribed in the form of a patch. According to the Respondent, when confronted with this discrepancy, J.K. explained that the patches would fall off prematurely due to her perspiring. She would then put on a new patch prematurely, and run out of her prescribed patches prior to her next medical visit. Dr. Shurman confirmed this scenario was not uncommon and noted that J.K. was on hormone replacement. I accept Dr. Shurman's opinion that this abnormal UDS was properly investigated and found to be reasonably explained. [However, I also agree with Dr. Munzing that the required documentation showing that Respondent addressed and resolved the aberrant results was missing from the medical records, which is itself beneath the standard of care. Tr. 266–67; 268–69; 270; 279.]

The next UDS controversy relates to THC appearing in J.K.'s UDS, which had not been prescribed by the Respondent. Dr. Munzing noted the danger in combining marijuana with J.K.'s prescribed medications. The Respondent testified that J.K. had been prescribed Marinol during her cancer treatment, and she apparently continued to take it after obtaining it from a dispensary. The Respondent testified that he cautioned her about potential side effects and contraindications in conjunction with the other medications she was taking, but the testimony was not supported by documentation in the medical records. Dr. Shurman opined that marijuana derivatives were commonly prescribed now and did not present a significant danger to J.K. [Even assuming that the aberrant result was investigated and handled appropriately, I find in accordance with Dr. Munzing's testimony that Respondent's failure to document that he investigated and resolved the aberrant results was beneath the standard of care. Tr. 266–67; 268–69; 270; 279.]

The next abnormal UDS relates to the appearance of amphetamine, which was not prescribed by the Respondent. The Respondent recognized that the UDS results indicated the dose was likely pharmaceutical. The Respondent remembered that J.K. was being seen by a psychiatrist, who prescribed Adderall. The Respondent testified that he cautioned J.K. regarding taking her medications as prescribed. I find that the Respondent investigated and properly handled this UDS. [Even assuming that the aberrant result was investigated and handled appropriately, I find in accordance with Dr. Munzing's testimony that Respondent's failure to document that he investigated and resolved the aberrant results was beneath the standard of care. *Id.*]

The next issue related to J.K. taking in excess of the opioid dosage prescribed. Tr. 256–57. The Respondent testified that he counseled J.K. regarding the dangers of doing so. However, no further cautionary steps were taken. J.K. had a dosage of approximately 400 MME at this time and the MME had been increased by the Respondent. [With regard to patients who are not taking medications as prescribed, Dr. Munzing testified that ''there are significant risks of either taking too much [and] potentially overdosing [or] taking too little and potentially going through withdrawal.'' Tr. 411. Accordingly, Dr. Munzing testified, when ''a prescriber learn[s] about it, you need to counsel the patient and document that.'' *Id.*] Dr. Shurman suggested that it was normal for patients to take medications other than as strictly prescribed, and it was appropriate to average their compliant versus noncompliant behavior. That position is contrary to common sense, and I must reject it. At such high levels of MME, taking an opioid as prescribed must be more than a suggestion [in light of the risks identified by Dr. Munzing]. Allowing a patient to increase [or decrease] dosages on his own can be dangerous. I find the Respondent's [failure to take action and/or document the action taken with regard to addressing J.K.'s admission that she did not take the medication as prescribed] was insufficient to satisfy the standard of care.

The next controversy relates to attempts to titrate J.K. down on her opioids, Soma, and benzodiazepine. In reviewing the record, the Respondent described his efforts to get J.K. to ''buy in'' on the idea of titrating her off the high level MME she was on and off her benzodiazepine dose.*[GG] The Respondent also defended the medication regimen as it allowed J.K. to work and to complete her ADLs. However, according to Dr. Munzing, the standard of care requires practitioners to

*[EE] I do question how Respondent could credibly testify both that J.K. had previous workups from a neurologist such that no other imaging studies were necessary, and that Respondent suspected that J.K. had some elements of undiagnosed brain injury based her behavioral issues, continued headaches, and her history of being the victim of physical abuse. Tr. 552, 554. Ultimately the evidence on this issue was not fully developed by expert testimony and is not material to my decision in this matter.

*[FF] Text modified for clarity.

*[GG] Text omitted for clarity.

reduce the MME to the level that balances the highest level of activity with the least MME. Dr. Munzing described the danger inherent in the combination of controlled substances that J.K. found herself on, ''the Holy Trinity,'' as prescribed by the Respondent. When J.K. returned to the Respondent as a patient, she was on a fentanyl patch, which the Respondent continued. He also prescribed a short-acting opioid for breakthrough pain, and Soma to diffuse muscle spasms. He later concluded that Soma was not the right medication for J.K. and attempted to have her ''buy in'' to titrate off of it. Even crediting the Respondent's explanation for prescribing, which is not documented in the record, I credit Dr. Munzing's opinion that having J.K. on that dangerous combination was unjustified and contrary to the standard of care.

As to J.K.'s threat of suicide, Dr. Munzing opined that the Respondent's actions fell below the standard of care. Dr. Munzing testified that the standard of care for a doctor with a patient on high-dose opioids and has suicidal ideations is to get that patient immediate care, review the patient's mental health history, work with other providers such as a psychiatrist, and come up with a plan. Tr. 259. Typically, Dr. Munzing testified, a doctor would not continue the medications being prescribed and would work to develop a possible management plan for the patient. The standard of care would also require that the doctor have a discussion with the patient on a subsequent visit. Tr. 259–60. [Dr. Shurman did not offer an opinion on this issue.] The Respondent testified that he believed that J.K. [had no intention of following through on her] threat, which he believed was based solely on her fear that she would be without her medication. Tr. 564. Accordingly, the Respondent continued her prescription regime. I agree with Dr. Munzing's [credible opinion] that the Respondent's reaction, [particularly his continued prescribing without modification following J.K.'s suicide threat,] was outside the standard of care.

[In addition to the above areas, Dr. Munzing testified that with regard to prescribing to J.K., Respondent failed to take an appropriate history and examination to narrow down the cause of the headaches, Tr. 229; failed to adequately document the risks and attempts to moderate the risks, Tr. 235, 446, 448, 458; failed to obtain informed consent, *id.;* failed to medically justify the high levels of opioids or the dangerous combinations of opioids with Soma and a stimulant, Tr. 235–40; failed to document justification for increased dosages and changes to prescriptions, Tr. 244–45; and failed to take or document vital signs at multiple visits, Tr. 248–49. Based on these failures, I find in accordance with Dr. Munzing's testimony that each of the relevant prescriptions issued to J.K. were issued outside the usual course of professional practice and beneath the standard of care. Tr. 281.]

Discussion as to Patient P.S.

The following issues were controverted by the parties. The most significant controversy was related to P.S.'s repeated abnormal UDS. He tested negative for lorazapam and alprazolam several times, which were prescribed controlled substances. He also tested negative for morphine, a prescribed pain medication. Dr. Munzing faulted the Respondent for not immediately contacting P.S. to investigate and to monitor him more closely. The Respondent believed that P.S., who suffered from chronic pain and an anxiety disorder, had good days and bad days and would refrain from taking his medications some days, but was not abusing his medication. The Respondent also tried to refer P.S. to a psychiatrist. Dr. Shurman viewed P.S. as a challenging patient. He viewed the abnormal UDS, as long as they were not ongoing, as something which at least requires the practitioner's attention. Dr. Shurman believed the Respondent followed the standard of care with P.S. because he had a discussion with him and followed him closely with CURES, urine screens, etc., to ensure there was not an ongoing problem.[*HH] Tr. 692–94.

I find Dr. Munzing's testimony more credible in this instance. P.S. was prescribed dangerous combinations of medications with serious concurrent medical issues. He also suffered from mental health issues, but was not under psychiatric care. He demonstrated a propensity to refrain from taking his medication if he felt he did not need it and had fifteen abnormal drug screens, including several evidencing alcohol use. [As Dr. Munzing testified, there are significant risks for taking too much or too little medication. Tr. 411. And here, there is no indication that the Respondent documented that he investigated the aberrant results, counseled P.S. regarding them, or resolved the aberrancies; Dr. Munzing testified Respondent acted beneath the standard of care. Tr. 198–202.] I therefore find that the Respondent continuing prescribing to P.S. without modification, despite multiple aberrant drugs screens, fell below the standard of care.[*II]

The next matter in controversy was the justification for prescribing opioids and a benzodiazepine together. The Respondent prescribed P.S. morphine, hydromorphone, and a benzodiazepine at 366 MME per day. P.S. had serious concurrent health issues, including an embolism and DVT. The Respondent did not address these issues at the hearing, either through his own testimony or through his expert's testimony, except in the most general terms that his prescriptions were within the standard of care. As noted by Dr. Munzing, the patient's medical record does not reveal Respondent's rationale for issuing these prescriptions. Dr. Munzing's opinion is rational, logical, consistent with his other opinions and with the credible facts of the case, and was uncontroverted. Accordingly, I accept Dr. Munzing's opinion. I therefore find that the Respondent's actions to prescribe opioids and benzodiazepine fell below the standard of care because the Respondent failed to justify this dangerous medication regimen for P.S.

[In addition to the above areas, Dr. Munzing testified that with regard to prescribing to P.S., Respondent failed to obtain an adequate medical history, Tr. 183–84; failed to adequately document the full range of risks of using opioids and a benzodiazepine, Tr. 178; failed to obtain informed consent, Tr. 183, 374; failed to medically justify the controlled substance prescriptions, Tr. 190–97; failed to document justification for changes to prescriptions, Tr. 179–81, 193; failed to take or document vital signs at multiple visits and failed to perform proper musculoskeletal exams, Tr. 183. Based on these failures, I find in accordance with Dr. Munzing's testimony that each of the relevant prescriptions issued to J.K. were issued outside the usual course of professional practice and beneath the standard of care. Tr. 193.]

Discussion as to Patient D.L.

The first matter in controversy relates to the Respondent's inability to taper D.L. down from the high doses of medication. Despite acknowledging the importance of reducing the MME, D.L. would eventually reach 455 MME under the Respondent's care. Dr. Munzing explained that although the patient's chart suggests her opioid dosage was going to be reduced, the medical records

[*HH] Again, this position is not convincing. I cannot find that monitoring, assuming for the sake of argument that it was sufficient, can overcome Respondent's other failures, here, the failure to resolve repeated aberrant drug screens.

[*II] Text omitted for legal clarity.

reflect that the opioid dosage was actually increased over time. [Dr. Shurman opined that ''at the time she [first] came to Dr. Wynn'' it would not have been appropriate for Respondent to immediately taper D.L. from her dosages without ''getting a feel for [her], get[ting] a history, urine drug screens, CURES, etc.'' Tr. 703. Dr. Shurman went on to testify that D.L. continued getting the same combination of medications for a while, *id.,* but then never offered further testimony regarding the appropriateness of tapering after the first visits.] I credit Dr. Munzing's opinion that the [prescriptions issued to] D.L. were not consistent with the standard of care. Documenting an intent to reduce an opioid dosage, yet increasing it, is troubling. The Respondent provided no justification for increasing D.L.'s MME to such a high level.

The next matter in controversy relates to the indication of abnormal UDS. Dr. Munzing notes there is no explanation in the file for the aberrancies, nor any indication the Respondent investigated the matter or discussed any aberrant drug screens with D.L. The Respondent testified that he had ordered pharmacogenic testing for D.L. and discovered she had an altered gene expression that related to how she responded to morphine. He explained this condition was the reason for her aberrant UDSs, although nothing in the record showed that there was any discussion regarding the aberrant drug screens. Tr. 308. I therefore find that the Respondent did investigate and address the abnormal UDS results [but did not document resolution of the aberrant drug screens appropriately.]

Dr. Munzing cited D.L.'s age as an aggravating factor relative to Respondent's prescribing as she was is in her late 60's/early 70's. Tr. 287. She presented with a history of colon cancer, then experienced uncontrolled pain due to polyneuropathy, hip pain, and a failed spine surgery. The Respondent testified that he investigated hip injections and a pain pump as possible alternatives. Dr. Shurman noted that throughout treatment, D.L.'s subjective pain scale remained at a five or six out of ten. He considered this a success. [Dr. Shurman also offered his opinion that Respondent's prescribing to D.L. was appropriate because of ''how he handled it;'' specifically that ''he followed [her] closely, CURES, urine screens, kept an eye on [her] mentally . . . .'' Tr. 708.][*JJ]

[In addition to the above areas, Dr. Munzing testified that with regard to prescribing to P.S., Respondent: Failed to obtain an adequate medical history, Tr. 283; failed to adequately document the full range of risks of using opioids with a benzodiazepine and a sleeping agent, Tr. 286; failed to obtain informed consent, Tr. 297–98; failed to consider or document consideration of alternative strategies to manage D.L.'s pain, Tr. 300; failed to medically justify the controlled substance prescriptions, Tr. 289; and failed to take or document vital signs or perform proper musculoskeletal exams at multiple visits, Tr. 294, 296, 300. Based on these failures, I find in accordance with Dr. Munzing's testimony that each of the relevant prescriptions issued to J.K. were issued outside the usual course of professional practice and beneath the standard of care. Tr. 287, 290, 292, 294, 299, 301, 308, 309.]

Government's Burden of Proof and Establishment of a Prima Facie Case

Based upon my review of each of the allegations by the Government, it is necessary to determine if it has met its *prima facie* burden of proving the requirements for a sanction pursuant to 21 U.S.C. 824(a)(4). At the outset, I find that the Government has demonstrated and met its burden of proof in support of its allegations relating to Respondent's prescribing of controlled substances to patients D.P., J.K., D.L., and P.S.

Public Interest Determination: The Standard

[Under Section 304 of the CSA, ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined by such section.'' [*KK] 21 U.S.C. 824(a)(4).][47] Evaluation of the following factors has been mandated by Congress in determining whether maintaining such registration would be inconsistent with the ''the public interest'':

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(3) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). ''These factors are . . . considered in the disjunctive.'' *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003).

Any one or a combination of factors may be relied upon, and when exercising authority as an impartial adjudicator, the Agency may properly give each factor whatever weight it deems appropriate in determining whether a registrant's registration should be revoked. *Id.* (citation omitted); *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993); *see also Morall* at 173–74; *Henry J. Schwarz, Jr., M.D.,* 54 FR 16422, 16424 (1989). Moreover, the Agency is ''not required to make findings as to all of the factors,'' *Hoxie,* 419 F.3d at 482; *see also Morall,* 412 F.3d at 173. [Omitted for brevity.] The balancing of the public interest factors ''is not a contest in which score is kept; the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest . . . .'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009).

The Government's case invoking the public interest factors of 21 U.S.C. 823(f) seeks the revocation of the Respondent's COR based primarily on conduct most aptly considered under Public Interest Factors Two and Four.[48]

[*JJ] Again, this position is not convincing. Based on Dr. Munzing's credible expert testimony, I cannot find that monitoring, assuming for the sake of argument that it was sufficient, can overcome Respondent's other failures.

[*KK] Respondent argued that his continued registration is consistent with the public interest because he provides medical services to a community that is ''very under-served, under-privileged and in need of doctors like him.'' Tr. 18. The CSA requires me to consider Respondent's controlled substance dispensing experience, among other things, not whether Respondent's practice of medicine as a whole was beneficial to the community. 21 U.S.C. 823(f)(2); *see Frank Joseph Stirlacci, M.D.,* 85 FR 45229, 45239 (2020) (declining to accept community impact arguments); *see also Richard J. Settles, D.O.,* 81 FR 64940, 64945 n.16 (2016).

[47] [This text replaces the ALJ's original text and omits his original footnote for clarity.]

[48] 21 U.S.C. 823(f)(2), (4). There is nothing in the record to suggest that a state licensing board made any recommendation regarding [Respondent's prescribing practices] (Factor One). [Where the record contains no evidence of a recommendation by a state licensing board that absence does not weigh for or against revocation. *See Roni Dreszer, M.D.,* 76 FR 19434, 19444 (2011) (''The fact that the record contains no evidence of a recommendation by a state licensing board does not weigh for or against a determination as to whether continuation of the Respondent's DEA certification is consistent with the public interest.'')] Likewise, the record contains no evidence that the Respondent has [a ''conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, as Agency cases have noted,

[Factors Two and Four: The Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances [*LL]

According to the Controlled Substances Act's implementing regulations, a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). The Supreme Court has stated, in the context of the CSA's requirement that schedule II controlled substances may be dispensed only by written prescription, that ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse . . . [and] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006).[49]

Respondent has demonstrated substantial experience as a licensed California doctor since 2000; he has been board certified in Physical Medicine and Rehabilitation since 2004, and has maintained a subspecialty certification in Pain Management since 2006. RX 1, at 1. Respondent has practiced pain medicine in a variety of settings including in affiliation with hospitals, in group settings, and most recently rebuilding his preexisting private practice since 2016. Tr. 469–76. At the time of the hearing, Respondent testified that he served 600 active patients, and handled a total of approximately 7,000 medical appointments a year. Tr. 830. The Agency assumes that Respondent has prescribed legally, except where the Government has established violations of the law. Here, Respondent's treatment of the four patients as alleged in the OSC demonstrates that his prescribing practices fell beneath applicable standard of care.

I find that the Government's expert credibly testified, as supported by California law and California's Guide to the Laws and Guidelines for Prescribing, that the standard of care in California for prescribing controlled substances requires a physician to, amongst other things, obtain a detailed medical history, perform and document a physical examination, come up with a diagnosis, perform a risk stratification, and develop and document a customized management plan. Tr. 79. Thereafter, the physician must monitor the patient on a periodic and regular basis, which includes obtaining vital signs including blood pressure, heart rate, and respiratory rate at every office visit for patients on high dose opioids. Tr. 79–80, 87, 851–52. The standard of care further requires that physicians maintain complete and accurate records documenting all of the above steps in detail. Tr. 79–80. The standard of care requires that patients be notified of the risks and benefits of the use of controlled substances and the availability of any alternatives, that patients give informed consent, and that the notification of risks and informed consent be documented. Tr. 85–86.

I also found above, in accordance with Dr. Munzing's testimony, that Respondent issued each of the relevant controlled substance prescriptions to the four patients at issue without taking a proper medical or mental health history; conducting a sufficient physical, mental, or neurological examination; recording pain levels; documenting an appropriate treatment plan; documenting medical justification for the high levels of prescribed opioids; documenting discussion of the risks of the prescribed controlled substances and informed consent; monitoring the patient including taking key vital signs; and/or resolving inconsistent urine drug screen results. *See supra* Findings of Fact. I further found that each of the relevant prescriptions Respondent issued to the four individuals were issued without a legitimate medical purpose, outside the usual course of professional practice and beneath the standard of care in California. Accordingly, I find that Respondent violated 21 CFR 1306.04(a).

Indeed, Respondent repeatedly issued prescriptions without complying with the applicable standard of care and state law, thus demonstrating that his conduct was not an isolated occurrence, but occurred with multiple patients. *See Kaniz Khan Jaffery,* 85 FR 45667, 45685 (2020). For each of the four individuals, Respondent repeatedly, amongst other things, failed to have medical justification for issuing high dosages of opioids often in combination with other dangerous controlled substances, failed to properly obtain or document obtaining informed consent, and failed to properly monitor by taking or documenting the taking of vital signs.

Agency decisions highlight the concept that ''[c]onscientious documentation is repeatedly emphasized as not just a ministerial act, but a key treatment tool and vital indicator to evaluate whether the physician's prescribing practices are 'within the usual course of professional practice.' '' *Cynthia M. Cadet, M.D.,* 76 FR 19450, 19464 (2011). DEA's ability to assess whether controlled substances registrations are consistent with the public interest is predicated upon the ability to consider the evidence and rationale of the practitioner at the time that he prescribed a controlled substance—adequate documentation is critical to that assessment. *See Kaniz-Khan Jaffery,* 85 FR at 45686. Dr. Munzing testified that complete and accurate records are necessary because ''bottom line[,] it's a patient safety issue . . . . [I]f this patient ends up seeing another provider, whether it be the primary care provider, another sub-specialist, or the emergency room . . . they know . . . how the patient was, here's why they were taking what they're taking as far as a justification, and the patient is aware of the risk and accepts those risks.'' Tr. 89. The extreme failures in Respondent's documentation extended to each of the four individuals.

DEA decisions have found that ''just because misconduct is unintentional, innocent, or devoid of improper motive, [it] does not preclude revocation or denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify the revocation of an existing registration . . .'' *Bobby D. Reynolds, N.P., Tina L. Killebrew, N.P., & David R. Stout, N.P.,* 80 FR 28643, 28662 (2015) (quoting *Paul J. Caragine, Jr.* 63 FR 51592, 51601 (1998). ''Diversion occurs whenever controlled substances leave 'the closed system of distribution established by the CSA . . . .' '' *Id.* (citing *Roy S. Schwartz,* 79 FR 34360, 34363 (2014)). In this case, I have found that Respondent issued controlled substance prescriptions without complying with his obligations under the CSA and California law. *See George Mathew, M.D.,* 75 FR 66138, 66148 (2010)).

With regard to California law, just as I found a violation of 21 CFR 1306.04(a), I find that Respondent repeatedly issued controlled substance prescriptions what were not ''for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice,'' in violation of

there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010). Agency cases have therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.* The Government does not identify Factor Five as being relevant.]

[*LL] The ALJ evaluated Factors 2 and 4 in separate sections and I have combined and expanded on his analysis herein.

[49] [Footnote omitted along with original text for legal clarity.]

Cal. Health & Safety Code § 11153(a). California law also prohibits ''[p]rescribing, dispensing, or furnishing'' controlled substances ''without an appropriate prior examination.'' Cal. Bus. & Prof. Code § 2242(a). Crediting Dr. Munzing's testimony, I have found that the Respondent failed to conduct an appropriate prior physical, mental, and/or neurological examination with regard to his prescribing to each of the four individuals at issue, which I find violates Cal. Bus. & Prof. Code § 2242(a). Crediting Dr. Munzing's testimony, I find that Respondent acted outside the bounds of these laws with regard to his prescribing to each of the four patients.

Finally, California law prohibits ''[r]epeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs.'' Cal. Bus. & Prof. Code § 725(a). The Government cited to the sheer volume of prescriptions issued by Respondent to the four individuals at issue as its only proof of a violation of Cal. Bus. & Prof. Code § 725(a). While I note that the prescriptions were voluminous, the Government did not elicit testimony from its expert to establish that Respondent's prescribing to the four individuals at issue constituted clearly excessive prescribing in California. Accordingly, the Government has not met its burden of establishing a violation of Cal. Bus. & Prof. Code § 725(a).]

Here for the reasons discussed *supra,* I find the Government has proven by substantial evidence that Respondent violated California Business & Professional Code § 2242(a), California Health & Safety Code § 11153(a), and 21 CFR 1306.04(a).*MM

[Summary of Factors Two and Four and Imminent Danger

As found above, the Government's case establishes by substantial evidence that Respondent issued controlled substance prescriptions outside the usual course of the professional practice. I, therefore, conclude that Respondent engaged in misconduct that supports the revocation of his registration. *See Wesley Pope,* 82 FR 14944, 14985 (2017).

For purposes of the imminent danger inquiry, my findings also lead to the conclusion that Respondent has ''fail[ed] . . . to maintain effective controls against diversion or otherwise comply with the obligations of a registrant'' under the CSA. 21 U.S.C. 824(d)(2). The substantial evidence that Respondent issued controlled substance prescriptions outside the usual course of professional practice establishes ''a substantial likelihood of an immediate threat that death, serious bodily harm, or abuse of a controlled substance . . . [would] occur in the absence of the immediate suspension'' of Respondent's registration. *Id.* The risk of death was established in this case. There was ample evidence introduced to establish that combined use of opioid medicines with benzodiazepines or other drugs that depress the central nervous system has resulted in serious side effects including slowed or difficult breathing, comas, and deaths. GX 6, at 1. Dr. Munzing testified that ''[w]hen an individual is on a combination of an opiate and a benzodiazepine, the increased risk of overdose death goes up approximately tenfold.'' Tr. 86.

I credit Dr. Munzing's repeated testimony that Respondent was prescribing ''astronomical'' and ''incredibly high doses'' of individually dangerous drugs; one patient was prescribed over 6,000 MME which Dr. Munzing testified was ''the highest [he had] ever seen.'' Tr. 118, 125, 132. Moreover, many of the prescriptions at issue were issued in dangerous combinations including the ''holy trinity'' the ''new holy trinity'' and other dangerous combinations as have been discussed. Tr. 189, 238, 264. Dr. Munzing testified that for D.P. alone, the prescribing ''was incredibly dangerous. The patient is lucky to be alive.'' Tr. 177. In contrast, Respondent testified that he was not aware of any of his patients having suffered the consequence of an overdose due to medications he prescribed. Tr. 748. Even if I credit Respondent's testimony that none of his patients overdosed, I cannot rule out the real potential for addiction. Dr. Munzing testified, that ''addictive issue[s] with benzodiazepines and opiates is a very real risk and potentially life-altering risk.'' Tr. 458. Even the individuals' exposure to the increased risks caused by the dangerous combinations of the controlled substances Respondent prescribed could be harmful.

Thus, as I have found above, at the time the Government issued the OSC/ISO, the Government had clear evidence of violations of law based on the many controlled-substance prescriptions Respondent issued without complying with the California standard of care. *See supra* Factors Two and Four.]

[Sanction *NN

Where, as here, the Government has met its *prima facie* burden of showing that Respondent's continued registration is inconsistent with the public interest, the burden shifts to the Respondent to show why he can be entrusted with a registration. *Garrett Howard Smith, M.D.,* 83 FR 18882, 18910 (2018) (collecting cases). Here, Respondent has not established that he can be entrusted with a registration.

The CSA authorizes the Attorney General to ''promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter.'' 21 U.S.C. 871(b). This authority specifically relates ''to 'registration' and 'control,' and 'for the efficient execution of his functions' under the statute.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 259 (2006). A clear purpose of this authority is to ''bar[ ] doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking.'' *Id.* at 270.

In efficiently executing the revocation and suspension authority delegated to me under the CSA for the aforementioned purposes, I review the evidence and arguments Respondent submitted to determine whether or not he has presented ''sufficient mitigating evidence to assure the Administrator that he can be trusted with the responsibility carried by such a registration.'' *Samuel S. Jackson, D.D.S.,* 72 FR 23848, 23853 (2007) (quoting *Leo R. Miller, M.D.,* 53 FR 21931, 21932 (1988)). '' 'Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [the registrant's] actions and demonstrate that [registrant] will not engage in future misconduct.' '' *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (quoting *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Jackson,* 72 FR at 23853; *John H. Kennedy, M.D.,* 71 FR 35705, 35709 (2006); *Prince George Daniels, D.D.S.,* 60 FR 62884, 62887 (1995).

The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the

*MM Sentence modified to remove findings regarding California laws that were either dropped from the Government's case, *see supra* n.*D, or not established.

*NN I am replacing portions of the Sanction section in the RD with preferred language regarding prior Agency decisions; however, the substance is primarily the same.

acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior, and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).]

Here, [the ALJ found that] the Respondent had accepted responsibility that his record-keeping was not appropriate or sufficient.[50] [At the hearing, Respondent agreed with his attorney's question that ''looking back now at these records, [there were areas that he felt were] less than adequate.'' Tr. 488. But he also testified, ''I would say that some areas are appropriate.'' *Id.* The testimony does not contain sufficient detail for me to determine that Respondent fully understands the documentation requirement in the applicable standard of care and which ''areas'' were appropriate and which were not. Moreover, this limited acceptance of responsibility cannot be said to be unequivocal, or even complete.] Respondent has taken remedial steps to improve his documentation, including taking courses/trainings to bring himself into compliance with the critical documentation standard and hiring a scribe to help draft his patient notes, [but I find these remedial measures to be insufficient, without an unequivocal acceptance of responsibility, to convince me that Respondent's documentation failures will not recur]. Moreover, as to all of the allegations [unrelated to documentation failures], such as the dangerous prescribing of opioids in conjunction with benzodiazepines, failure to timely titrate, and ongoing failure to sufficiently monitor some of his patients, he has not accepted any responsibility.[51]

Egregiousness and Deterrence

[The Agency also looks to the egregiousness and extent of the misconduct, which are significant factors in determining the appropriate sanction. *Garrett Howard Smith, M.D.,* 83 FR at 18910 (collecting cases). As Dr. Munzing testified, not all of Respondent's prescribing practices were beneath the standard of care.] Dr. Munzing conceded he believed each of the subject patients likely had genuine pain, and testified that the Respondent either ordered tests or attempted to order tests, conducted UDS, prescribed Narcan, and made efforts to refer patients to specialists. Tr. 353. Dr. Munzing agreed that this is not a case of a doctor limiting treatment to merely giving patients pills to control their pain. Tr. 353–54. However, I find that [there were still substantial deviations from the standard of care such that each of the relevant prescriptions were issued in violation of the CSA and California law.] The proven misconduct is egregious and deterrence considerations weigh in favor of revocation. The proven misconduct involved the Respondent's repeated failure to maintain complete and accurate patient charts. The proven misconduct also involved the medically unjustified increase and maintenance of extraordinarily high MME levels for years at a time and combinations of dangerous medications.*OO [For example, Respondent prescribed D.P. opioids reaching 6,000 MME, which Dr. Munzing testified ''was incredibly dangerous. The patient is lucky to be alive.'' Tr. 176.]

I further find that deterrence considerations weigh in favor of revocation. [In sanction determinations, the Agency has historically considered its interest in deterring similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Joseph Gaudio, M.D.,* 74 FR 10083, 10095 (2009); *Singh,* 81 FR at 8248.] Allowing the Respondent to retain his COR despite the proven misconduct would send the wrong message to the regulated community. Imposing a sanction less than revocation would create the impression that registrants can maintain DEA registration despite their wholesale failure to maintain accurate and complete records, increase MME levels to dangerous levels, and maintain those levels without documenting appropriate medical justification.[52] Revoking the Respondent's COR communicates to registrants that DEA takes all failings under the CSA seriously and that severe violations will result in severe sanctions.

Lack of Candor

The degree of candor displayed by a registrant during a hearing is ''an important factor to be considered in determining . . . whether [the registrant] has accepted responsibility'' and in formulating an appropriate sanction. *Hills Pharmacy, LLC,* 81 FR 49816, 49845 (2016) (citing *Michael S. Moore,* 76 FR 45867, 45868 (2011)). The Government has established that the Respondent lacked candor during his testimony by claiming the term ''education'' within a prescribing order reflected that the Respondent had then admonished the patient as to the risks of the subject medications. [The record at issue states in relevant part: ''2. Medication refill Norco 10/325 . . . 3. Medication refill OxyContin 20 mg . . . 4. Education refill morphine sulfate ER 200 mg . . . 5. Medication refill morphine sulfate ER 30 mg . . . .'' GX 14, at 40.] The context of term within the sentence makes it much more likely that the term ''education'' was a scrivener's error for the intended term, ''medication.'' Tr. 756; GX 14 at p. 40.] This was a lapse in candor by the Respondent [which weighs against my ability to entrust him with a registration].

Recommendation

Considering the entire record before me, the conduct of the hearing, and observation of the testimony of the witnesses presented, I find that the Government has met its burden of proof and has established a *prima facie* case for revocation. In evaluating Factors [Two and] Four of 21 U.S.C. 823(f), I find that the Respondent's COR is inconsistent with the public interest. Furthermore, I find that the Respondent has failed to overcome the Government's *prima facie* case [and that the sanction of revocation is warranted].*PP

Therefore, I recommend that the Respondent's DEA COR No. BW7210759 should be *revoked*, and that any pending applications for modification or renewal of the existing registration, and any applications for additional registrations, be *denied*.*PP

Mark M. Dowd,

U.S. Administrative Law Judge.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C.

[50] [Omitted for clarity.]

[51] Where a registrant has not accepted responsibility, it is not necessary to consider evidence of the registrant's remedial measures. *Id.* at 5498 n.33.

*OO Sentence modified for clarity.

[52] [Omitted for legal clarity.]

*PP Remainder text omitted consistent with my findings above.

*PP The ALJ went on to state: ''I note that Dr. Shurman has agreed to shepherd the Respondent in his future practice, and the Respondent has represented he is more than amenable to a conditional allowance of his registration. Dr. Munzing observed that this is not a case of a doctor limiting treatment to merely giving patients pills to control their pain. The Respondent either ordered tests or attempted to order tests and on occasion made efforts to refer patients to specialists. As the violations by the Respondent do not appear wanton and may have been more the result of inexperience, as the Respondent is a relatively young physician, and with relatively limited experience, the Administrator may consider permitting the Respondent to retain his registration with the

Continued

requirement of weekly review and certification of his prescribing practices by Dr. Shurman, for a one year period.'' As an initial matter, I cannot agree with the ALJ's characterization that Respondent is inexperienced where he has been board certified in a pain management subspecialty for approximately sixteen years and has been a licensed practitioner in California for approximately twenty-two years. Regardless, with a regulated community of more than 1.8 million registrants and fewer than two-thousand Diversion Control Employees (*See* DEA FY 2022 Budget Request *available at https://www.justice.gov/jmd/page/file/1399016/download*), DEA must be able to rely on physicians to maintain complete and accurate medical records and otherwise comply with the CSA without overseeing weekly monitoring. Accordingly, I agree with the ALJ that revocation is the appropriate sanction.

824(a) and 21 U.S.C. 823(f), I hereby revoke DEA Certificate of Registration No. BW7210759 issued to Brenton D. Wynn, M.D. Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(f), I further hereby deny any other pending applications for renewal or modification of this registration, as well as any other pending application of Brenton D. Wynn, M.D., for registration in California. This Order is effective May 23, 2022.

Anne Milgram,

Administrator.

[FR Doc. 2022–08514 Filed 4–21–22; 8:45 am]

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FEDERAL REGISTER

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Part III

The President

Proclamation 10371—Declaration of National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Russian-Affiliated Vessels to United States Ports

Federal Register
Vol. 87, No. 78
Friday, April 22, 2022

Presidential Documents

Title 3—

The President

Proclamation 10371 of April 21, 2022

Declaration of National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Russian-Affiliated Vessels to United States Ports

By the President of the United States of America

A Proclamation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and section 1 of title II of Public Law 65–24, ch. 30, June 15, 1917, as amended (Magnuson Act) (46 U.S.C. 70051), I, JOSEPH R. BIDEN JR., President of the United States of America, hereby find and proclaim that:

The policies and actions of the Government of the Russian Federation to continue the premeditated, unjustified, unprovoked, and brutal war against Ukraine constitute a national emergency by reason of a disturbance or threatened disturbance of international relations of the United States. In order to address this national emergency and secure the observance of the rights and obligations of the United States, I hereby authorize the Secretary of Homeland Security (Secretary) to make and issue such rules and regulations as the Secretary may find appropriate to regulate the anchorage and movement of Russian-affiliated vessels, and delegate to the Secretary my authority to approve such rules and regulations, as authorized by the Magnuson Act.

Section 1. I hereby prohibit Russian-affiliated vessels from entering into United States ports.

Sec. 2. The prohibition of section 1 of this proclamation applies except:

(a) to Russian-affiliated vessels used in the transport of source material, special nuclear material, and nuclear byproduct material for which, and for such time as, the Secretary of Energy, in consultation with the Secretary of State and the Secretary of Commerce, determines that no viable source of supply is available that would not require transport by Russian-affiliated vessels; and

(b) to Russian-affiliated vessels requesting only to enter United States ports due to force majeure, solely to allow seafarers of any nationality to disembark or embark for purposes of conducting crew changes, emergency medical care, or for other humanitarian need.

Sec. 3. For the purposes of this proclamation:

(a) the term ''Russian-affiliated vessels'' means:

(i) vessels of Russian registry (i.e., the vessel is Russian flagged);

(ii) vessels that are Russian owned (i.e., the legal title of ownership of the vessel that appears on the ship's registration documents is the Government of the Russian Federation or a Russian company, citizen, or permanent resident); or

(iii) vessels that are Russian operated (i.e., a Russian company, citizen, or permanent resident is responsible for the commercial decisions concerning the employment of a ship and decides how and where that asset is employed).

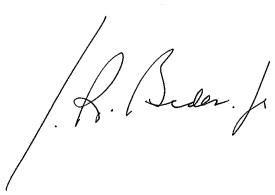
(b) the term ''byproduct material'' has the same meaning given to that term in section 11(e) of the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. 2014(e)).

(c) the term ''source material'' has the same meaning given to that term in section 11(z) of the AEA (42 U.S.C. 2014(z)).

(d) the term ''special nuclear material'' has the same meaning given to that term in section 11(aa) of the AEA (42 U.S.C. 2014(aa)).

Sec. 4. The prohibition set forth in this proclamation shall be effective as of 12:01 a.m. eastern daylight time on April 28, 2022, and shall be immediately transmitted to the Congress and published in the *Federal Register*.

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



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