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Contents

Federal Register

Vol. 89, No. 71

Thursday, April 11, 2024

Separate Parts In This Issue

Reader Aids

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

10726.....25747

7 CFR

Proposed Rules:

1223.....25543

14 CFR

1216.....25497

15 CFR

744.....25503

20 CFR

416.....25507

21 CFR

1308 (2 documents) 25514, 25517

Proposed Rules:

1308.....25544

22 CFR

303.....25519

26 CFR

Proposed Rules:

1 (2 documents) 25550, 25551

33 CFR

100.....25531

Proposed Rules:

165.....25553

39 CFR

Proposed Rules:

3030.....25554

40 CFR

180.....25531

Proposed Rules:

52.....25555

47 CFR

4.....25535

49 CFR

673.....25694

Rules and Regulations

Federal Register
Vol. 89, No. 71
Thursday, April 11, 2024

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1216

[Document Number–23–038; Docket Number–NASA–2023–0005]

RIN 2700–AE56

Procedures for Implementing the National Environmental Policy Act

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is amending and updating its regulations for implementing the National Environmental Policy Act of 1969 (NEPA). The amendments revise NASA's regulations to better align with the Agency's current and near future actions, adjust the level of NEPA review and documentation required for certain actions, and provide more concise descriptions of NASA actions. Additionally, consistent with NASA's requirement to review existing Categorical Exclusions (CatExs) at least every seven years to determine whether modifications, additions, or deletions are appropriate, this final rule incorporates updates to NASA's CatExs based on that review. With the exception of revisions to the legal authority citations, there are no textual changes between the proposed rule that published for public comment on May 3, 2023, and this final rule.

DATES: Effective April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Tina Norwood, (202) 740–2308, *tina.norwood@nasa.gov.* General information about NASA's NEPA process is available on the NASA NEPA Portal and NEPA Library at *https://www.nasa.gov/emd/nepa.*

SUPPLEMENTARY INFORMATION:

Background

The National Environmental Policy Act, as amended, 42 U.S.C. 4321–4347, requires Federal agencies to consider the environmental impact of their proposed actions (42 U.S.C. 4332(2)(C)). The Council on Environmental Quality (CEQ) has promulgated regulations at 40 CFR parts 1500 through 1508 (CEQ regulations) implementing NEPA that provide the overarching framework for Federal agency implementation of NEPA. On July 16, 2020, the CEQ issued a final rule comprehensively updating its regulations implementing NEPA, 85 FR 43304 (July 16, 2020). The CEQ regulations require Federal agencies to develop or revise their procedures for implementing NEPA, as necessary, for consistency with CEQ's regulations or for efficiency (40 CFR 1507.3(b), (c)). However, the CEQ has extended the deadline for agencies to propose conforming adjustments to their agency NEPA procedures until September 14, 2023, 86 FR 34154 (June 29, 2021). Moreover, consistent with Executive Orders (E.O.) 13990 of January 20, 2021, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, and E.O. 14008 of January 27, 2021, Tackling the Climate Crisis at Home and Abroad, the CEQ is conducting a comprehensive review of the 2020 revisions to the CEQ regulations and is taking a phased approach to reconsider the regulations. See 86 FR 55757 (Oct. 7, 2021); 87 FR 23453 (Apr. 20, 2022). In this rulemaking, NASA is implementing new and revised CatExs, revising its list of actions normally requiring environmental impact statements or environmental assessments (EA), and making other clarifying non-substantive revisions. NASA will consider whether to propose additional changes to its procedures at the conclusion of CEQ's ongoing rulemaking process.

NASA's NEPA regulations are codified in 14 CFR subpart 1216.3 (Procedures for Implementing the National Environmental Policy Act). NASA consulted with the CEQ during the development of these updated procedures and prior to their publication in the **Federal Register**. These regulations (1) codify changes to NASA's implementing regulations which reflect lessons learned since NASA last amended its NEPA regulations in 2012 (77 FR 3102 (Jan. 23, 2012)); (2) encourage increased use of programmatic NEPA documents and tiering for routine and repetitive actions for which the environmental impact is well understood; and (3) add several new CatExs for NASA actions that neither individually nor cumulatively have a significant impact on the quality of the human environment.

In addition to NASA's implementing regulations, NASA provides specific instructions pertaining to NEPA program responsibilities internally through NASA Procedural Requirements (NPR) 8580.1, Implementing the National Environmental Policy Act and E.O. 12114, available at NASA's NEPA website *https://www.nasa.gov/emd/nepa* (under NEPA Process).

Since NASA's last NEPA regulatory revision in 2012, NASA's mission, programs, and strategic goals have evolved with a key focus on leading a new era of human space exploration, performing transformative aeronautics technology research, and continuing to study our planet and the solar system. This final rule builds upon decades of NASA's experience and seeks to better align with NASA's evolving technology and mission demands. NASA's NEPA regulations and policy will continue to be available on NASA's Public Portal at *https://www.nasa.gov/emd/nepa/* (under NEPA Process). In addition, NASA NEPA policy (NPR 8580.1) will be updated to reflect the revised updated NASA regulations and posted on the website.

Public Comment Discussion: NASA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 3, 2023 (88 FR 27804), which proposed amendments to its current regulations at 14 CFR part 1216. The 60-day comment period on the proposed rule closed on July 3, 2023. NASA received three comments on the public docket. Two of the comments are specific to this NPRM. Given their brevity, NASA sets forth the substantive comments, and NASA's response, in full below. NASA received a third comment that did not pertain to NASA's NEPA process nor this rulemaking and which does not require a response. After a thorough review of the comments received, NASA made no changes to the text of this rule in response to the received comments.

Public Comment #1: ''In paragraph one of the introduction section it says that NASA wants to 'adjust the level of NEPA review and documentation required for certain NASA actions that have become routine over the past decade for which NASA has determined they do not have significant environmental effects'. I am curious if this is effective. If NASA is doing their own review over what they believe does not effect the environment is it neutral? How do we know they're actually following environmental regulations when they did the review themselves. I feel as though they are biased in this determination and that outside agencies should check on this and make sure they actually do not negatively impact the environment before they are allowed to change the regulations.''

Public Comment #2: ''I support revising NEPA procedures to keep up to date on new scientific information and rapidly changing environmental conditions. But I oppose agency attempts to circumvent necessary NEPA analysis out of convenience or political expediency. NEPA remains a critically important law to ensure objective analysis of the potential environmental consequences of proposed actions and of feasible alternatives. It is also often the only opportunity for meaningful government transparency and public involvement.

The climate and extinction crises are escalating and pose an existential threat to humanity and the biosphere. It is imperative that NASA and other federal agencies use every NEPA analysis process to seek solutions to these crises. Our 'spaceship Earth' is in trouble and we need to be taking bold and innovative actions to save it. Thank you very much for your consideration.''

NASA Response: In response to the first comment, NASA notes that NEPA and the CEQ regulations implementing NEPA place the responsibility for evaluating the environmental impact of an action proposed by a Federal agency on the agency that proposes the action. 42 U.S.C. 4332(2)(C); 40 CFR 1501.2. The CEQ regulations also direct agencies to ''adopt, as necessary, agency NEPA procedures to improve agency efficiency and ensure that agencies make decisions in accordance with the Act's procedural requirements,'' and to ''consult with [CEQ] while developing or revising [their] proposed procedures.'' 40 CFR 1507.3(b)(1), (c). To ensure NASA's NEPA regulations properly reflect these statutory and regulatory mandates, NASA coordinated development of this rule with the CEQ, received Federal interagency comments during the E.O. 12866 interagency review process, and made the NPRM available for a 60-day period of public review and comment. On January 18, 2024, the CEQ provided a letter confirming that this rule is in conformity with NEPA and the CEQ regulations. This process ensured that NASA's NEPA regulations are unbiased and conform to the CEQ's NEPA regulations. NEPA and the CEQ regulations furthermore require NASA to ensure the professional integrity, including scientific integrity, of its environmental analyses. 42 U.S.C. 4332(2)(D); 40 CFR 1502.23. NASA's regulations and policies in 14 CFR subpart 1216.1 will ensure that NASA's analyses of environmental impacts of proposed actions will not pre-determine any outcome (*i.e.,* will be neutral and present the decision maker with an evidence- and science-based analysis). 14 CFR 1216.1.

Further, NASA's changes to its NEPA regulations are fully supported by: (1) the substantial administrative record, which provides supporting information for the review, development, and implementation of NASA's new and modified CatExs; (2) NASA's scoping and public notice and comment process, which has informed the Agency on the appropriate level of NEPA review to typically be applied to similar actions; and (3) final NEPA documents themselves, which are widely available to the public.

NASA directly benefits from its partnership with cooperating and consulting agencies and Native American Tribes that have jurisdiction over an aspect of a proposed action or special expertise with respect to any environmental issue. Such consultation and coordination are also required by other independent legal requirements (*e.g.,* consultation under the Endangered Species Act, government-to-government consultation with Tribal Nations, consultation regarding effects to cultural resources under the National Historic Preservation Act; coordination with regard to impacts to wetlands under the Clean Water Act, etc.).

NASA also agrees with the second commenter's statements regarding the importance of NEPA and its critical role in objective agency decision-making. NASA is not updating the rule to circumvent the NEPA process out of convenience or political expediency. Rather, the updates to the regulations seek to improve NASA's consideration of environmental impacts related to its evolving mission, which includes the study of the Earth and collection of data essential to man's understanding of short and long-term effects of climate change. By encouraging programmatic reviews and updating NASA's list of categorical exclusions, the regulation drives efficiencies that will help NASA further this mission. In addition, NASA's final rule provides transparency and public involvement, emphasizing NASA's commitment to the integrity of the NEPA process.

Statutory Authority: The National Aeronautics and Space Act, 51 U.S.C. 20101 *et seq.,* authorizes the NASA Administrator to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

Regulatory Analysis

A. Executive Order (E.O.) 12866—Regulatory Planning and Review

E.O.s 13563 and 12866 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, reducing costs, harmonizing rules, and promoting flexibility. After conferring with the Office of Management and Budget, this final rule has been determined to not meet the criteria set forth under section 3(f) of E.O. 12866 for designation as a ''significant regulatory action.''

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the final rule is published. This requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (5 U.S.C. 603). This final rule modifies existing policies and procedural requirements for NASA compliance with NEPA. The final rule makes no substantive changes to requirements imposed on applicants for licenses, permits, financial assistance, and similar actions as related to NEPA compliance. Therefore, NASA certifies this final rule does not have a ''significant economic impact on a substantial number of small entities.''

C. Review Under the Paperwork Reduction Act

This final rule does not contain any information collection requirements

subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

D. Environmental Review Under the National Environmental Policy Act

The final rule revises agency procedures and guidance for implementing NEPA. NASA NEPA procedures are procedural guidance to assist in the fulfillment of Agency responsibilities under NEPA but are not the Agency's final determination of what level of NEPA analysis is required for a particular proposed action. The CEQ sets forth the requirements for establishing agency NEPA procedures in its regulations at 40 CFR 1507.3. The CEQ regulations do not require agencies to conduct NEPA analyses or prepare NEPA documentation when establishing their NEPA procedures. The determination that establishing agency NEPA procedures does not require supporting NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill 1999), *aff'd,* 230 F.3d 947, 954–55 (7th Cir. 2000).

E. Review Under Executive Order 13132

NASA has considered this final rule under the requirements of E.O. 13132, Federalism. The Agency has concluded that the rule conforms with the federalism principles set out in this E.O., will not impose any compliance costs on the states, and will not have substantial direct effects on the states or the relationship between the National Government and the states or on the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

F. Review Under the Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1531–1538), NASA has assessed the effects of the final rule on state, local, and Tribal governments, and the private sector. This final rule would not compel the expenditure of $100 million or more by any state, local, or Tribal government, or anyone in the private sector. Therefore, this final rule is not subject to the requirements of section 202 and 205 of the UMRA.

G. Expected Impact of the Final Rule

NASA does not expect this final rule to have any economic impact on the overall economy of the United States; state, local, or Tribal governments or communities; or any private party involved in commercial space launch activities at NASA facilities. Given the most recent data NASA has available, most NASA actions fall within the scope of a CatEx (98 percent categorically excluded, 1.4 percent had an environmental assessment (EA)/Finding of No Significant Impact, and 0.16 percent had an environmental impact statement (EIS)/Record of Decision). By expanding the list of actions covered by a CatEx, this final rule promotes more efficient NEPA compliance without sacrificing the integrity of the environmental impact review process for those actions which may require an EA or EIS.

The updates to several existing NASA CatExs and the addition of nine new CatExs are intended to further streamline NASA NEPA compliance for actions that, individually or cumulatively, do not have a significant impact on the quality of the human environment. The final rule does not materially alter the budgetary impact of entitlements, grants, NASA loan programs, or the rights and obligations of recipients thereof. The final rule does not raise novel legal or policy issues; rather it promotes consistency with the CEQ's NEPA implementing regulations, thereby providing more regulatory certainty concerning NEPA compliance obligations to both NASA programs and commercial space operators who may propose actions that would occur on NASA jurisdictional facilities. Therefore, this final rule is not expected to have any adverse effect, economically or otherwise, on NASA, any other Federal, state, local, or Tribal entity, or any private party who may propose an action that would occur at a NASA jurisdictional facility.

List of Subjects in 14 CFR Part 1216

Environmental impact statements, Flood plains, Foreign relations.

For the reasons given in the preamble, NASA amends 14 CFR part 1216 as follows:

PART 1216—ENVIRONMENTAL QUALITY

■ 1. Add an authority citation for part 1216 to read as follows:

Authority: 51 U.S.C. 20101 *et seq.;* 42 U.S.C. 4321 *et seq.;* 42 U.S.C. 4371 *et seq.;* 42 U.S.C. 7609; 40 CFR parts 1500 through 1508.

Subpart 1216.3—Procedures for Implementing the National Environmental Policy Act (NEPA)

■ 2. The authority citation for subpart 1216.3 is revised to read as follows:

Authority: 51 U.S.C. 20101 *et seq.;* 42 U.S.C. 4321 *et seq.;* 40 CFR parts 1500 through 1508.

■ 3. Amend § 1216.300 by revising paragraph (b) to read as follows:

§ 1216.300 Scope.

* * * * *

(b) Through this subpart, NASA adopts the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500 through 1508) and supplements those regulations with this subpart, for actions proposed by NASA that are subject to NEPA. This subpart and NASA's NEPA policy are available on NASA's Public Portal at *https://www.nasa.gov/emd/nepa.*

■ 4. Revise § 1216.302 to read as follows:

§ 1216.302 Responsibilities.

(a) The NASA Senior Agency Official (SAO), is the Associate Administrator, Mission Support Directorate. The SAO is responsible for overall Agency NEPA compliance, including integration of NEPA into the Agency's planning and decision making and resolving implementation issues.

(1) The NASA Senior Environmental Official (SEO) is the Assistant Administrator, Office of Strategic Infrastructure. The SEO, in consultation with the SAO, is responsible for development and implementation of NASA NEPA policy requirements and guidance which fully integrate NEPA compliance into Agency planning and decision-making processes. To the extent the CEQ's implementing regulations at 40 CFR parts 1500 through 1508 reserve a specific authority to the SAO, the SAO is the responsible NASA official for resolving matters related to that specific authority.

(2) The NASA Headquarters/Environmental Management Division (HQ/EMD), in consultation with the SEO, is responsible for implementing NEPA functions and guiding NASA's integration of NEPA into the Agency's planning and decision making. HQ/EMD provides oversight of all NASA entities in implementing their assigned responsibilities under NEPA. HQ/EMD, in coordination with the Center Environmental Management Office, is responsible for determining the appropriate level of NEPA documentation and maintaining a publicly accessible internet portal which includes information on the status of environmental impact statements (EISs) and other elements of NASA's NEPA program (*https://www.nasa.gov/emd/nepa*).

(3) Each NASA Center has an environmental management office that

directs and implements the NEPA process, such as evaluating proposed actions; developing, reviewing, and approving required documentation; and advising Center-level program and project managers.

(b) The ''Responsible Official'' is the NASA official who will ensure that planning and decision-making for each proposed Agency action complies with the regulations in this subpart and with Agency NEPA policy and guidance provided by the SAO, SEO, HQ/EMD, and the Center's environmental management office as applicable.

(c) NASA must comply with this subpart when considering issuance of a permit, lease, easement, or grant to a non-Federal party and may seek such non-Federal party's assistance in obtaining necessary information and completing the NEPA process.

■ 5. Revise § 1216.303 to read as follows:

§ 1216.303 NEPA process in NASA planning and decision making.

(a) NEPA is a procedural statute intended to ensure Federal agencies consider the environmental impacts of their proposed actions in the decision-making process. Full integration of the NEPA process with NASA project and program planning improves Agency decisions and ensures:

(1) Consideration of sustainability, environmental stewardship, and compliance with applicable environmental statutes, regulations, and policies.

(2) NASA's analyses and documentation are prepared using a process that is transparent to the public, including opportunities for receipt and consideration of public comment, when appropriate.

(3) Potential program and project risks and delays are minimized.

(b) In considering whether the effects of a proposed action are significant and determining the appropriate level of NEPA review and documentation (*i.e.,* EIS, environmental assessments (EA), categorical exclusions (CatEx)), NASA shall consider and analyze the potentially affected environment (*i.e.,* affected area [national, regional, or local] and resources located therein) and the degree of the effects of the proposed action (*e.g.,* short- and long-term effects, effects both beneficial and adverse, effects on public health and safety, effects that would violate Federal, state, Tribal, or local law protecting the environment).

(c) NASA shall consider the reasonably foreseeable environmental impacts of a proposed Agency action, along with technical, economic, public health and safety, security, and other factors that are reasonably foreseeable, beginning in the early planning stage of a proposed action. NASA will not take any action that would have an adverse environmental impact or limit the choice of reasonable alternatives prior to completing NEPA review except as provided in 40 CFR 1506.1.

(d) Records of Environmental Consideration (RECs) will be used to document: (1) Application of specific categorical exclusions to proposed actions;

(2) Adoption of Federal draft or final NEPA documents;

(3) Reevaluation of an existing NEPA document; and

(4) Determination of whether an action fits within an existing NEPA document, including a programmatic NEPA document.

■ 6. Amend § 1216.304 by:

■ a. Revising paragraphs (a), (b), (c) introductory text, (c)(1), and (c)(3) through (6);

■ b. Removing paragraph (c)(7);

■ c. Revising paragraphs (d) introductory text and (d)(1)(ii) and (iv) through (vi);

■ d. Adding paragraph (d)(1)(ix);

■ e. Revising paragraphs (d)(2)(i) through (iii) and (v);

■ f. Adding paragraphs (d)(2)(vi) through (ix);

■ g. Revising paragraphs (d)(3) and (d)(4)(ii) through (iv);

■ h. Adding paragraphs (d)(4)(vi) and (vii);

■ i. Revising paragraphs (d)(5)(i) and (ii) and (e); and

■ j. Removing paragraph (f).

The revisions and additions read as follows:

§ 1216.304 Categorical exclusions.

(a) Categorical exclusions (CatExs) are categories of Agency actions that normally do not have a significant effect on the human environment and therefore do not require preparation of an EA or EIS. CatExs reduce paperwork, improve Government efficiency, and eliminate delays in initiating and completing proposed actions having no significant environmental impact. For some CatExs, as indicated in paragraph (d) of this section, a REC is required.

(b) Application of CatExs and presence of extraordinary circumstances:

(1) A proposed action may be categorically excluded if the action fits within the categories listed in paragraph (d) of this section and it does not involve any extraordinary circumstances in which a normally excluded action may have a significant effect.

(2) If an extraordinary circumstance as described in paragraph (c) of this section is present, NASA may nevertheless categorically exclude the proposed action if the action fits within the categories listed in paragraph (d) of this section and NASA determines that implementation of mitigation measures, such as relocation of the proposed action to an alternative site or limiting construction activities to certain seasonal periods of the year to avoid the extraordinary circumstance(s) in question, are sufficient to allow the proposed action to be categorically excluded.

(c) Extraordinary circumstances include situations where the proposed action:

(1) Has a reasonable likelihood of having a significant effect on public health and safety or the human environment.

* * * * *

(3) Is of significantly greater scope or size than is normal for the particular category of action.

(4) Has a reasonable likelihood of having effects that would violate Federal, state, Tribal, or local laws, or other enforceable requirements applicable to environmental protection.

(5) May adversely affect sensitive resources, such as, but not limited to, Federally listed threatened or endangered species, their designated critical habitat, wilderness areas, floodplains, wetlands, aquifer recharge areas, coastal zones, wild and scenic rivers, and significant fish or wildlife habitat, unless the impact has been resolved through another environmental review process (*e.g.,* the Clean Water Act (CWA) or the Coastal Zone Management Act (CZMA)).

(6) May adversely affect national natural landmarks or cultural or historic resources, including, but not limited to, property listed on or eligible for listing on the National Register of Historic Places, unless the impact has been resolved through another review process (*e.g.,* the National Historic Preservation Act (NHPA)).

(d) The following actions normally do not have a significant effect on the human environment and are categorically excluded from the requirement to prepare an EA or EIS:

(1) * * *

(ii) Issuing procedural rules, manuals, directives, and requirements.

* * * * *

(iv) Preparing documents, including design and feasibility studies, analytical supply and demand studies, reports and recommendations, master and strategic plans, and other advisory documents.

(v) Information-gathering exercises, such as inventories, audits, and studies.

(vi) Preparing and disseminating information, including document mailings, publications, classroom materials, conferences, speaking engagements, websites, and other educational/informational activities.

* * * * *

(ix) Field studies, including water sampling, monitoring wells, cultural resources surveys, biological surveys, geologic surveys, modeling or simulations, routine data collection and analysis, and/or temporary equipment.

(2) * * *

(i) Routine maintenance, minor construction or rehabilitation, minor demolition, minor modification, minor repair, and continuing or altered operations at, or of, existing NASA or NASA-funded or -approved facilities and equipment, such as buildings, roads, grounds, utilities, communication systems, and ground support systems (*e.g.,* space tracking and data systems). This includes routine operations such as security, public health and safety, and environmental services.

(ii) Installing or removing equipment, including component parts, at existing Government or private facilities.

(iii) Contributing equipment, software, technical advice, exchanging data, and consulting with other agencies and public and private entities.

* * * * *

(v) Routine packaging, labeling, storage, transportation, and disposal of materials and wastes, in accordance with applicable Federal, state, Tribal, or local laws or requirements. Examples include but are not limited to hazardous, non-hazardous, and other regulated materials and wastes.

(vi) Habitat and species management activities conducted within the boundaries of NASA-controlled properties in accordance with applicable Federal, state, or local requirements. Examples include but are not limited to restoration of unique or critical habitat; thinning or brush control to improve growth of natural habitat, reduce invasive species, or reduce fire hazard; prescribed burning to reduce natural fuel build-up, reduce invasive species, or improve native plant vigor; planting appropriate vegetation that does not include noxious weeds or invasive plants; or wildlife management activities (REC required).

(vii) Small-scale, short-term cleanup actions under the Resource Conservation and Recovery Act or other authorities to reduce risk to human health or the environment from the release or imminent and substantial threat of release of a hazardous substance other than high-level radioactive waste and spent nuclear fuel, including treatment (such as incineration, encapsulation, physical or chemical separation, and compaction), recovery, storage, or disposal of wastes at existing facilities currently handling the type of waste involved in the action.

(viii) Replacement of existing energy sources with alternative or renewable energy sources that comply with existing permit conditions.

(ix) Routine maintenance, repair, and operation of vessels (including unmanned autonomous surface vessels), aircraft (including unmanned aircraft systems), overland/surface transportation vehicles, and other transportation systems as applicable. Examples include but are not limited to transportation or relocation of NASA equipment and hardware by barge, aircraft, or surface transportation system (*e.g.,* tractor trailer or railroad); retrieval of spent solid rocket boosters by vessel; repair or overhaul of vessel, aircraft, or surface transportation systems that do not result in a change in the environmental impacts of their normal operation.

(3) Research, Development, and Science Activities including:

(i) Research, development, testing, and evaluation in compliance with all applicable Federal, state, Tribal, or local laws or requirements and Executive Orders. This includes the research, development, testing, and evaluation of scientific instruments proposed for use on spacecraft, aircraft (including unmanned aircraft systems), sounding rockets, balloons, laboratories, watercraft, or other outdoor activities.

(ii) Use of small quantities of radioactive materials used for instrument detectors, calibration, and other purposes. Materials may be associated with the proposed use on spacecraft, aircraft (including unmanned aircraft systems), sounding rockets, balloons, laboratories, watercraft, or other outdoor activities.

(iii) Use of lasers for research and development, scientific instruments and measurements, and distance and ranging, where such use meets all applicable Federal, state, Tribal, or local laws or requirements and Executive orders. This includes lasers associated with spacecraft, aircraft (including unmanned aircraft systems), sounding rockets, balloons, laboratories, watercraft, or other outdoor activities.

(iv) Use of non-space nuclear system payloads on various platforms (*e.g.,* launch vehicle, sounding rocket, scientific balloon, and aircraft) (REC required).

(v) Return of samples from solar system bodies (*e.g.,* asteroids, comets, planets, dwarf planets, and planetary moons) to Earth when categorized as an Unrestricted Earth Return. NASA defines this activity as collecting extraterrestrial materials from solar system bodies, deemed by scientific opinion to have no indigenous life forms, and returning those samples to Earth (REC required).

(4) * * *

(ii) Granting or accepting easements, leases, licenses, rights-of-entry, and permits to use NASA property, or any non-NASA property, for activities that would be categorically excluded in accordance with this section (REC required).

(iii) Transfer or disposal of real property, property rights, or interests if a resulting change in use is a use that would be categorically excluded under this section (REC required).

(iv) Transferring real property administrative control to another Federal agency, including the return of public domain lands to the Department of the Interior (DoI) or other Federal agencies, and reporting of property as excess and surplus to the General Services Administration (GSA) for disposal, when the agency receiving administrative control (or GSA, following receipt of a report of excess) shall complete any necessary NEPA review prior to any change in land use (REC required).

* * * * *

(vi) Change in the facility status of real property assets (*e.g.,* active or inactive).

(vii) Reductions, realignments, or relocation of personnel into existing Federally owned or commercially leased space that does not involve a substantial change affecting the supporting infrastructure (*e.g.,* no increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase).

(5) * * *

(i) Periodic aircraft (including unmanned aircraft systems) flight activities, including training and research and development, which are routine and comply with applicable Federal, state, Tribal, or local laws or requirements, and Executive Orders.

(ii) Relocation of similar aircraft (including unmanned aircraft systems) not resulting in a substantial increase in total flying hours, number of aircraft operations, operational parameters (*e.g.,* noise), or permanent personnel or logistics support requirements at the receiving installation (REC required).

(e) The Responsible Official shall review the proposed action in its early

planning stage and consider the scope of the action, the potentially affected environment, and the degree of the reasonably foreseeable effects of the action to determine whether extraordinary circumstances exist that could result, either individually or cumulatively, in significant environmental impacts. If extraordinary circumstances exist, the Responsible Official must determine whether application of the categorical exclusion to the proposed action is appropriate or whether preparation of an EA or EIS is required.

■ 7. Revise § 1216.305 to read as follows:

§ 1216.305 Actions normally requiring an environmental assessment (EA).

(a) NASA shall prepare an EA, which complies with 40 CFR 1501.5, when a proposed action is not categorically excluded and is not likely to have significant effects or when the significance of the effects is unknown. NASA shall consider the potentially affected environment and degree of the effects of the action when determining whether to prepare an EA.

(b) NASA actions normally requiring an EA include:

(1) Altering the ongoing operations at a NASA Center where the significance of the environmental effect(s) is unknown.

(2) Construction or modifications of facilities that represent a major change to an existing master plan and could result in a change in the environmental effect(s).

(3) Actions that are expected to result in major changes to established land use.

(4) Launching a spacecraft containing a space nuclear system. Space nuclear systems include radioisotope power systems, such as radioisotope thermoelectric generators and radioisotope heater units, and fission systems used for surface power and spacecraft propulsion.

■ 8. Revise § 1216.306 to read as follows:

§ 1216.306 Actions normally requiring an environmental impact statement (EIS).

(a) NASA shall prepare an EIS for actions that are likely to significantly impact the quality of the human environment, including actions for which an EA demonstrates that significant environmental impacts will potentially occur which will not be reduced or eliminated by changes to the proposed action or mitigation of its potentially significant environmental impacts. An EIS shall be prepared and published in accordance with CEQ's implementing regulations (40 CFR part 1502).

(b) NASA actions normally requiring an EIS include:

(1) Development and operation of new NASA-developed launch vehicles or space transportation systems.

(2) Management, including recovery, transport, and curation, of sample returns to Earth from solar system bodies (such as asteroids, comets, planets, dwarf planets, and planetary moons) that would receive a Restricted Earth Return categorization. NASA requires such a mission to include additional measures to ensure any potential indigenous life form would be contained so it could not adversely impact humans or Earth's environment.

(3) Substantial construction projects expected to result in significant effect(s) on the quality of the human and natural environment when such construction and its effects are not within the scope of an existing master plan.

■ 9. Revise § 1216.307 to read as follows:

§ 1216.307 Programmatic documents and tiering.

(a) For actions that require EAs or EISs, NASA encourages programmatic-level analysis for actions that are similar in nature, broad in scope, or likely to have similar environmental effects. Programmatic NEPA analyses may take place in the form of an EA or EIS. (b) Tiering from previously prepared EISs or EAs is appropriate when it would eliminate repetitive discussions of the same issues and exclude from consideration issues already decided. Tiering from a programmatic-level NEPA document is appropriate for site- or project-specific actions that are included within the scope of the programmatic-level analysis.

■ 10. Revise § 1216.308 to read as follows:

§ 1216.308 Supplemental EAs and EISs.

(a) In cases where a major Federal action remains to occur, supplemental documentation may be required for previously prepared EAs or EISs under the following circumstances:

(1) If substantial changes are made to the proposed action that are relevant to environmental concerns; or

(2) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action and its impacts; or

(3) NASA determines that the purposes of NEPA will be furthered by doing so.

(b) The preparation of a supplemental EA or EIS shall be undertaken using the same procedural requirements set forth in 40 CFR 1501.5 or 40 CFR part 1502, as applicable; however, in the event a supplement to an EIS is required, scoping shall not be required unless, at NASA's discretion and in consideration of the factors and requirements of 40 CFR 1501.9, it is determined to be necessary or would otherwise further the purposes of NEPA.

(c) When it is unclear if an EA or EIS supplement is required, NASA may prepare a Supplement Analysis.

(1) The Supplement Analysis will discuss the circumstances that are pertinent to deciding whether to prepare a supplemental EA or EIS.

(2) The Supplement Analysis will contain sufficient information for NASA to determine whether:

(i) An existing EA or EIS should be supplemented;

(ii) A new EA or EIS should be prepared; or

(iii) No further NEPA documentation is required.

(3) NASA shall make the determination and the related Supplement Analysis available to the public for information.

(d) When applicable, NASA shall incorporate the determination and supporting Supplement Analysis made under paragraph (b) of this section, into the administrative record related to the action that is the subject of the EA or EIS supplement or determination.

■ 11. Revise § 1216.309 to read as follows:

§ 1216.309 Mitigation and monitoring.

When the analysis proceeds to an EA or EIS and mitigation measures are adopted for the purpose of avoiding or reducing the significance of environmental impacts, such mitigation measures will be identified in the EA Finding of No Significant Impact (FONSI) or the EIS Record of Decision (ROD). NASA shall implement mitigation measures (including adaptive management strategies, where appropriate) consistent with applicable FONSIs and/or RODs and shall monitor their implementation and effectiveness. The Responsible Official shall ensure that funding for such mitigation measures is included in the program or project budget.

■ 12. Amend § 1216.310 by revising paragraph (a) to read as follows:

§ 1216.310 Classified actions.

(a) The classified status of a proposed action does not relieve NASA of the requirement to assess, document, and consider the environmental impacts of a proposed action.

* * * * *

■ 13. Revise § 1216.311 to read as follows:

§ 1216.311 Emergency responses.

(a) When the Responsible Official determines that emergency circumstances exist which make it necessary to take immediate response and/or recovery action(s) before preparing a NEPA analysis, then the following provisions apply:

(1) The Responsible Official may undertake immediate emergency response and/or recovery action(s) necessary to protect life, property, or valuable resources. When taking such action(s), the Responsible Official shall, to the extent practicable, mitigate foreseeable adverse environmental impacts.

(2) At the earliest practicable time, the Responsible Official shall notify the SAO of the emergency and any past, ongoing, or future NASA emergency response and/or recovery action(s). The SAO shall determine if NEPA applies and the appropriate level of NEPA analysis to document the emergency. If the emergency response and/or recovery action(s) will reasonably result in significant environmental impacts, the SAO shall consult with the CEQ about alternative arrangements for compliance with NEPA.

(b) If the Responsible Official proposes emergency response and/or recovery actions that will continue beyond those needed to immediately protect life, property, and valuable resources, the Responsible Official shall consult with the SAO to determine the appropriate level of NEPA compliance. If continuation of the emergency actions will reasonably result in significant environmental impacts, the SAO shall consult with the CEQ about alternative arrangements for compliance.

■ 14. Revise Appendix A to Subpart 1216.3 to read as follows:

Appendix A to Subpart 1216.3 of Part 1216—Acronyms

CatEx Categorical Exclusion
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
CWA Clean Water Act
CZMA Coastal Zone Management Act
DoI (U.S.) Department of the Interior
EA Environmental Assessment
EMD Environmental Management Division
EIS Environmental Impact Statement
FONSI Finding of No Significant Impact
FR Federal Register
GSA General Services Administration
HQ Headquarters
NASA National Aeronautics and Space Administration
NEPA National Environmental Policy Act
NHPA National Historic Preservation Act
REC Record of Environmental Consideration
RHU Radioisotope Heater Unit
RPS Radioisotope Power Systems
SAO Senior Agency Official
SEO Senior Environmental Official
OGC Office of the General Counsel
ROD Record of Decision
U.S.C. United States Code

Nanette Smith,

Team Lead, NASA Directives and Regulations.

[FR Doc. 2024–07006 Filed 4–10–24; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 240405–0101]

RIN 0694–AJ57

Addition of Entities to and Revision of Entry on the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding 11 entries to the Entity List, under the destinations of the Peoples Republic of China (China) (6), the Russian Federation (Russia) (3), and the United Arab Emirates (UAE) (2). These entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. This rule also modifies one existing entity on the Entity List under the destination of China.

DATES: This rule is effective April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List

The Entity List (Supplement no. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b) of the EAR. The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. BIS places entities on the Entity List pursuant to parts 744 (Control Policy: End-User and End-Use Based) and 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Entity List Decisions

Additions to the Entity List

The ERC determined to add Khalaj Trading LLC and Mahdi Khalaj Amirhosseini, both under the destination of the UAE to the Entity List for engaging in the export and attempted export of items on the Commerce Control List (Supplement 1 to part 774 of the EAR) from the United States to Iran through the UAE, in apparent violation of the Iranian Transactions and Sanctions Regulations (ITSR) (see 31 CFR part 560) and the EAR. These activities are contrary to the national security and foreign policy interests of the United States under § 744.11 of the EAR.

The ERC determined to add LINKZOL (Beijing) Technology Co., Ltd. and Xi'an Like Innovative Information Technology Co., Ltd., both under the destination of China, to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of China's military modernization efforts, including in support of Military-Intelligence End Users. The ERC also determined to add Beijing Anwise Technology Co., Ltd. and SITONHOLY (Tianjin) Co., Ltd., both under the destination of China, to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of China's military modernization efforts. These activities are contrary to U.S. national security

and foreign policy interests under § 744.11 of the EAR.

The ERC determined to add Jiangxi Xintuo Enterprise Co. Ltd., under the destination of China, to the Entity List for supporting Russia's military through the procurement, development, and proliferation of Russian unmanned aerial vehicles (UAVs). This activity is contrary to the national security and foreign policy interests of the United States under § 744.11. In addition, this entity qualifies as a military end user under § 744.21(g) of the EAR. This entity is receiving a footnote 3 designation because the ERC has determined that it is a Russian or Belarusian 'military end user' pursuant to § 744.21 of the EAR. A footnote 3 designation subjects this entity to the Russia/Belarus-Military End User Foreign Direct Product (FDP) rule, detailed in § 734.9(g) of the EAR. The entity is added with a license requirement for all items subject to the EAR and a license review policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis.

The ERC determined to add to the Entity List Aerosila JSC SPE, Delta-Aero LLC, and JSC ODK-Star, under the destination of Russia, and Shenzhen Jiasibo Technology Co., Ltd., under the destination of China, for working as a part of a network to procure aerospace components, including dual-use components for UAV applications, for the Iran Aircraft Manufacturing Industrial Company (HESA) in Iran. These components are used to develop and produce Shahed-series UAVs which have been used by Iran to attack oil tankers in the Middle East and by Russia in Ukraine. This activity is contrary to the national security and foreign policy interests of the United States under § 744.11 and these entities qualify as military end users under § 744.21(g) of the EAR. These entities are receiving a footnote 3 designation because the ERC has determined that they are Russian or Belarusian 'military end users' pursuant to § 744.21 and are subject to the Russia/Belarus-Military End User Foreign Direct Product (FDP) rule, detailed in § 734.9(g) of the EAR. The entities are added with a license requirement for all items subject to the EAR and a license review policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis.

For the reasons described above, this final rule adds the following 11 entities, including aliases where appropriate, to the Entity List:

China

- Beijing Anwise Technology Co., Ltd.;
- Jiangxi Xintuo Enterprise Co., Ltd.;
- LINKZOL (Beijing) Technology Co., Ltd.;
- Shenzhen Jiasibo Technology Co., Ltd.;
- SITONHOLY (Tianjin) Co., Ltd.; *and*
- Xi'an Like Innovative Information Technology Co., Ltd.

Russia

- Aerosila JSC SPE;
- Delta-Aero LLC; *and*
- JSC ODK-Star.

United Arab Emirates

- Khalaj Trading LLC; *and*
- Mahdi Khalaj Amirhosseini.

Modifications to the Entity List

This final rule implements the decision of the ERC to modify one existing entry on the Entity List under the destination of China. Specifically, the ERC determined to add one alias to the entry for Shanghai Biren Intelligent Technology Co., Ltd., for a total of three aliases.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on April 11, 2024, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) before May 13, 2024. Any such items not actually exported, reexported or transferred (in-country) before midnight, on May 13, 2024, require a license in accordance with this final rule.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves an information collection approved by OMB under control number 0694–0088, Simplified Network Application Processing System. BIS does not anticipate a change to the burden hours associated with this collection as a result of this rule. Information regarding the collection, including all supporting materials, can be accessed at *https://www.reginfo.gov/public/do/PRAMain.*

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—END-USE AND END-USER CONTROLS

■ 1. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3

CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 8, 2022, 87 FR 68015, 3 CFR, 2022 Comp., p. 563; Notice of September 7, 2023, 88 FR 62439 (September 11, 2023).

■ 2. Supplement no. 4 is amended by:

■ a. Under CHINA, PEOPLE'S REPUBLIC OF,

■ i. Adding, in alphabetical order, entries for ''Beijing Anwise Technology Co., Ltd.;'' ''Jiangxi Xintuo Enterprise Co., Ltd.;'' ''LINKZOL (Beijing) Technology Co., Ltd.;'' and

■ ii. Revising the entry for ''Shanghai Biren Intelligent Technology Co., Ltd.;'' and

■ iii. Adding, in alphabetical order, entries for ''Shenzhen Jiasibo Technology Co., Ltd.;'' ''SITONHOLY (Tianjin) Co., Ltd.;'' *and* ''Xi'an Like Innovative Information Technology Co., Ltd.;'' and

■ b. Under RUSSIA, adding entries in alphabetical order for ''Aerosila JSC SPE;'' ''Delta-Aero LLC;'' and ''JSC ODK-Star;'' and

■ c. Under UNITED ARAB EMIRATES, adding entries in alphabetical order for ''Khalaj Trading LLC;'' and ''Mahdi Khalaj Amirhosseini.''

The revision and additions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	* *	*	*
CHINA, PEOPLES REPUBLIC OF.	* *	* *	*	*
	Beijing Anwise Technology Co., Ltd., a.k.a., the following one alias: —Anwise Global. A02, Idea Park, MingJi International Center, No. 35 Da Huang Zhuang, Chao Yang District, Beijing, China; *and* Room 8112, 8th Floor, Building 3, Yard 30, Shixing Street, Shijingshan District, Beijing, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*
	Jiangxi Xintuo Enterprise Co. Ltd., a.k.a., the following one alias: —T–MOTOR. Room 2103, No. 39 Commercial Building, Greenland New Metropolis, Ziyang, Avenue, High-tech Industrial Development Zone, Nanchang City, Jiangxi Province, China; *and* Rooms 2405, 2406, 2407, 24th Floor, B# Office Building, Yunzhongcheng, No. 3399 Ziyang Avenue, Nanchang High-tech Industrial Development Zone, Nanchang City, Jiangxi Province, China; *and* No. 888 Tianxiang Avenue, Nanchang City, Jiangxi Province, China.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*
	LINKZOL (Beijing) Technology Co., Ltd., a.k.a., the following one alias: —Lianzhong Cluster (Beijing) Technology Co., Ltd. Room 701, Floor 7, Building 6, No. 1 Chaoqian Road, Science and Technology Park, Changping District, Beijing, China; *and* Floor 6, Building 6, Beijing Enterprises Hongchuang Technology Park, No. 1 Chaoqian Road, Science and Technology Park, Changping District, Beijing (Changping Department), China; *and* E–1201, Wuhan Living Room, No. 8 Hongtu Avenue, Dongxihu District, Wuhan, Hubei (Wuhan Department), China; *and* C–2701, Wuhan Living Room, No. 8 Hongtu Avenue, Dongxihu District, Wuhan, Hubei (Wuhan Department), China; *and* Room 941, Building 1, Yard 62, Balizhuang, Haidian District, Beijing (Haidian Department), China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*
	Shanghai Biren Intelligent Technology Co., Ltd., a.k.a., the following three aliases: —Biren; —Biren Technology; *and* —Shanghai Biren Technology. Building 16, Room 1302, 13th Floor, No. 2388 Chenhang Highway, Minhang District, Shanghai, China.	For all items subject to the EAR. (See §§ 734.9(e)(2) and 744.11 of the EAR)[4].	Presumption of denial.	88 FR 71992 10/19/2023. 89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Shenzhen Jiasibo Technology Co., Ltd., a.k.a., the following one alias: —SHENZHEN JIA SIBO SCIENCE AND TECHNOLOGY CO., LTD. No. 57, Busha Road, Buji, Longgang, Shenzhen, China.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*
	SITONHOLY (Tianjin) Co., Ltd., No. 1 Cuipu Road, Yixian Science Industrial Park, Tianjin Economic and Technological Development Zone, Tianjin, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*
	Xi'an Like Innovative Information Technology Co., Ltd., Floor 12, Building 1, Greenland Lehe City, South Second Ring Road, Beilin District, Xi'an City, Shaanxi Province, China; *and* Room 2914, Building 1, No. 323, East Section of Second Ring South Road, Beilin District, Xi'an City, Shaanxi Province, China.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*
RUSSIA	* *	* *	*	*
	Aerosila JSC SPE, a.k.a., the following three aliases: —JSC SPE AEROSILA; —NPP AEROSILA, AO; *and* -NPP AEROSILA, PPO. 6, Zhdanov St., Stupino, Moscow Region, 142800, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*
	Delta-Aero LLC, a.k.a., the following two aliases: —LLC TSTO "Delta-Aero"; *and* —DELTA–AERO TECHNICAL SERVICE CENTER LLC. 4, Kyiv Highway 22 km, Building 1, Floor 6, Room 620 A/37, Moscow, 108511, Russia; *and* 68/70 Butyrsky Val Street, 1st Floor, Room 110, Baker Plaza Business Center, Moscow, 127055, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*
	JSC ODK-Star, a.k.a., the following two aliases: —JSC "UEC–STAR"; *and* —AO ODK–STAR. 140A, Kuibysheva Street, Perm, 614990, Russia.	For all items subject to the EAR (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*
UNITED ARAB EMIRATES.	* *	* *	*	*
	Khalaj Trading LLC, 2604 Tower A, Bin Ham Towers, Altaawun St., Sharjah, U.A.E.; *and* #4 Street # 6–A, Karama Area, Bur Dubai, Dubai, U.A.E.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
	* *	* *	*	*
	Mahdi Khalaj Amirhosseini, 2604 Tower A, Bin Ham Towers, Altaawun St., Sharjah, U.A.E.; *and* #4 Street # 6–A, Karama Area, Bur Dubai, Dubai, U.A.E.	For all items subject to the EAR (See § 744.11 of the EAR).	Presumption of denial.	89 FR [INSERT FR PAGE NUMBER], 4/11/2024.
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[3] For this entity, "items subject to the EAR" includes foreign-produced items that are subject to the EAR under § 734.9(g) of the EAR. See §§ 746.8 and 744.21 of the EAR for related license requirements, license review policy, and restrictions on license exceptions.

[4] For this entity, "items subject to the EAR" includes foreign-produced items that are subject to the EAR under § 734.9(e)(2) of the EAR. See § 744.11(a)(2)(ii) for related license requirements and license review policy.

Thea D. Rozman Kendler,
Assistant Secretary for Export Administration.

[FR Doc. 2024–07760 Filed 4–10–24; 8:45 am]
BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Docket No. SSA–2023–0010]

RIN 0960–AI82

Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are finalizing our proposed regulation to apply nationwide the In-Kind Support and Maintenance (ISM) rental subsidy exception that has until now been available only for SSI applicants and recipients residing in seven States. This final rule provides that a ''business arrangement'' exists, such that the SSI applicant or recipient is not considered to be receiving ISM in the form of room or rent, when the amount of monthly required rent for the property equals or exceeds the presumed maximum value (PMV).

DATES: This final rule will be effective September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Tamara Levingston, Office of Income Security Programs, 6401 Security Blvd., Robert M. Ball Building, Suite 2512B, Woodlawn, MD 21235, 410–966–7384. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *https://www.ssa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The SSI program provides monthly payments to: (1) adults and children with a disability or blindness; and (2) adults aged 65 or older. Eligible individuals must meet all the requirements set forth in the Social Security Act (Act), including having resources and income below specified amounts.[1] Resources are cash or other liquid assets or any real or personal property that individuals (or their spouses, if any) own and could convert to cash to be used for their support and maintenance.[2] Income is anything individuals receive in cash or in-kind that they can use to meet their food and shelter needs.[3] An individual's resources may affect their eligibility to receive SSI, while their income may affect both their eligibility for payments and the amount of payments they are eligible to receive.

The Act and our regulations[4] define income as ''earned,'' such as wages from work, and ''unearned,'' such as gifted cash.[5] Both earned income and unearned income include items received in-kind.[6] This final rule pertains to rental subsidy, which is a type of ISM under the broader umbrella of unearned income. Generally, we value in-kind items at their current market value, and we apply various exclusions for both earned and unearned income.[7] However, we have special rules for valuing ISM that is received as unearned income.[8]

ISM includes shelter that is given to an individual or that the individual receives because someone else pays for it.[9] For example, an SSI applicant or recipient whose friend allows them to live rent-free at an investment property owned by the friend, or whose friend pays their rent, receives ISM in the form of shelter. Shelter includes room, rental payments, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.[10]

Rental Subsidy

Our regulations clarify that an individual is not receiving ISM in the form of room or rent if they are paying the monthly required rent charged under a ''business arrangement.''[11] Under our general regulatory definition prior to this final rule, a ''business arrangement'' existed when the amount of monthly required rent equaled or exceeded the current market rental value (CMRV)—that is, the price of rent on the open market in the individual's locality.[12] To illustrate, if the owner of an apartment would rent that property to any potential tenant for $800 per month, then the CMRV is $800 per month. Consequently, in this example, if an SSI applicant or recipient agrees to pay the landlord rent in the amount of $800 per month, a ''business arrangement'' would exist and the SSI applicant or recipient would not be receiving ISM in the form of room or rent. The SSI applicant or recipient in this example would thereby—absent any other countable income or resources—receive the Federal Benefit Rate (FBR).[13] Conversely, if the SSI applicant or recipient agrees to pay the landlord less than the CMRV of $800 per month (for example, $400 per month), we would impute the difference between the CMRV and the monthly required rent as ISM received by the applicant or recipient in the form of room or rent (up to the PMV, which is $334.33 in 2024).[14] In this example, the landlord agrees to accept a rent of $400 per month instead of the CMRV of $800. The rental subsidy amount is $400. However, the PMV is $334.33 in 2024, so only $314.33 would be counted as ISM (after we subtract the $20 general income exclusion from the PMV and assuming there is no other income). Consequently, in this example the SSI recipient would receive $628.67 as a monthly payment in 2024[15] (the 2024 FBR ($943) minus the PMV and minus the general income exclusion ($314.33 (or $334.33 − $20)) = $628.67).

[1] See 42 U.S.C. 1382 and 20 CFR 416.202 for a list of the eligibility requirements. See also 20 CFR 416.420 for general information on how we compute the amount of the monthly payment by reducing the benefit rate by the amount of countable income as calculated under the rules in subpart K of 20 part 416.

[2] 20 CFR 416.1201(a).

[3] 20 CFR 416.1102. See also 20 CFR 416.1103 for examples of items that are not considered income.

[4] See 42 U.S.C. 1382a and 20 CFR 416.1102 through 416.1124.

[5] See 20 CFR 416.1104.

[6] See 20 CFR 416.1110 and 416.1120.

[7] See 20 CFR 416.1111(d), 416.1112, 416.1123(c), and 416.1124.

[8] See 20 CFR 416.1123(c) and 416.1131 through 416.1147.

[9] See 20 CFR 416.1130(b). We recently published a final rule to remove food from the calculation of ISM. See *Omitting Food From In-Kind Support and Maintenance Calculations,* 89 FR 21199 (Mar. 27, 2024). The amendatory language shown below reflects changes to 20 CFR 416.1130 made by that final rule, since it has been published, although the change will not be effective until September 30, 2024.

[10] See 20 CFR 416.1130(b).

[11] 20 CFR 416.1130(b).

[12] See id. See also 20 CFR 416.1101.

[13] See 20 CFR 416.1101. *Federal Benefit Rate* (FBR) means the maximum Federal monthly payment rate for an eligible individual or couple. It is the figure from which we subtract countable income to find out how much your Federal SSI benefit should be. The FBR does not include the rate for any State supplement paid by us on behalf of a State. The FBR for 2024 is $943 for an individual or $1,415 for an eligible individual with an eligible spouse.

[14] When an SSI applicant or recipient receives ISM and the one-third reduction rule does not apply, we use the presumed value rule (PMV). Instead of determining the actual dollar value, we presume that the ISM received is worth a maximum value. This maximum value (or PMV) is one-third of the FBR plus the amount of the general income exclusion ($20). See 20 CFR 416.1140 and POMS SI 00835.300. In 2024, the PMV is $334.33 for an individual.

[15] For the purposes of this exercise, we are assuming there is no other countable income. In a real-world case, at times there are other countable income sources, and in such cases those income sources would factor into the monthly payment amount as well.

Exception

Following court cases that challenged how we applied these ISM rules for rental subsidy, we provided an exception for residents of the Seventh Circuit (in our regulations),[16] residents of the Second Circuit (in an Acquiescence Ruling),[17] and residents of Texas (in the Program Operations Manual System (POMS)).[18] For residents of these seven excepted States (Connecticut, New York, Vermont, Illinois, Indiana, Wisconsin, and Texas), a ''business arrangement'' exists when the monthly required rent equals or exceeds the PMV (instead of the CMRV). Application of this rental subsidy exception tends to reduce or eliminate the amount of ISM counted towards an individual's SSI payment, which generally results in a higher SSI payment amount. In the example, discussed above, an SSI applicant or recipient living in one of the seven excepted States who agrees to pay $400 per month for an apartment with a CMRV of $800 per month would not be charged ISM because their monthly required rent is more than the PMV ($334.33 for 2024). Consequently, the SSI applicant or recipient would continue to receive the FBR (provided they did not have any other countable income or resources for SSI purposes).

Proposed Rule

Consistent with the *Social Security Administration's Agency Strategic Plan for Fiscal Years 2022–2026,* and with the stated goal of simplifying the SSI program, advancing equality, and promoting uniform treatment of rental assistance, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 24, 2023, entitled *Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients.*[19] In the NPRM, we proposed to revise our regulations by making the rental subsidy exception our nationwide policy. Under the proposed rule, all SSI applicants and recipients would be held to the same standard; that is, a ''business arrangement'' exists, and the applicant or recipient is not considered to be receiving ISM in the form of room or rent, if the applicant or recipient has a monthly required rent equal to or exceeding the PMV.

We are making these changes based on the Commissioner of Social Security's rulemaking authority specified in sections 205(a), 702(a)(5), 1631(d)(1), 1631(e)(1)(A), and 1633(a) of the Social Security Act. These sections of the Act give the Commissioner the authority to adopt rules relating to, among other things, what data the Commissioner determines is necessary for the agency to collect for the effective and efficient administration of the SSI program, as well as the nature and extent of the evidence applicants and recipients need to provide to establish benefit eligibility. The modifications to our policy regarding how we will determine rental subsidy are a proper exercise of the Commissioner's rulemaking authority under the Act.

The NPRM includes a discussion of the ISM policy[20] as well as the rationale for and analysis of this policy change,[21] which in this final rule we are adopting in full. As discussed in the NPRM, the rationale underlying the exception that has been in place in the seven excepted States was based largely on the court decisions from the Second and Seventh Circuit Courts of Appeal.[22] In *Jackson,* the Seventh Circuit reasoned that it is not enough for a claimant to be provided shelter at a rate below market value for that difference to be counted as ''income'' for SSI purposes; rather, to be counted as ''income,'' the difference between the market value and the monthly required rent must result in increased purchasing power to meet an applicant's or recipient's basic needs.[23] In *Ruppert,* the Second Circuit similarly found that the difference between the market value and the monthly required rent should constitute an ''actual economic benefit'' to be counted as ''income'' for SSI purposes.[24] In implementing *Ruppert* for residents of the Second Circuit, we announced in our Acquiescence Ruling that an applicant or recipient does not receive an ''actual economic benefit'' from a rental subsidy when the amount of monthly required rent equals or exceeds the PMV.[25]

Thus, applying nationally the definition of ''business arrangement'' based on the PMV rather than the CMRV focuses on the SSI applicant's or recipient's purchasing power or the actual economic benefit they receive and ensures that all SSI applicants and recipients, regardless of where they reside, will have the same policy applied to them regarding the definition of a business arrangement. This policy change therefore supports our goal of enhancing equality in the programs we administer for all applicants and recipients.

Comment Summary

We solicited comments on the proposed rule and received 179 public comments on our NPRM from August 24, 2023, through October 23, 2023. All comments are available for public viewing at *https://www.regulations.gov/document/SSA-2023-0010-0001/comment.* These comments were received from:

- Individuals; and
- Advocacy groups, such as the National Organization of Social Security Claimants' Representatives and the Consortium for Constituents with Disabilities.

We carefully considered the public comments we received. A significant majority of commenters (170 comments) supported the policy we proposed in the NRPM—to extend the rental subsidy exception nationwide—without reservation or suggestions for modifications. Some commenters agreed with the proposal, but recommended further amendments to ensure the greatest number of SSI applicants and recipients could avail themselves of the benefits provided by the new policy. Only one commenter disagreed with the proposal altogether.

We received several comments suggesting changes that are not feasible for us to make or are outside the scope of the proposed rule and the final rule. For example, some commenters recommended changes to the statutorily set resource limits, and others recommended that we do away with counting ISM altogether. Even though these comments are outside the scope of the NPRM and final rule, we address them in a general manner to help the public better understand the SSI program. We note that commenters frequently compared or conflated the concepts of *rental subsidy* and *rental liability,* which are not the same thing under our policies. An individual receives ISM in the form of *rental subsidy* when the monthly required rent (including a flat fee payment) is less than the amount charged under a

[16] See 20 CFR 416.1130(b); *Jackson* v. *Schweiker,* 683 F.2d 1076 (7th Cir. 1982).

[17] See Acquiescence Ruling (AR) 90–2(2): *Ruppert* v. *Bowen,* 871 F.2d 1172 (2d Cir. 1989)—*Evaluation of a Rental Subsidy as In-Kind Income for Supplemental Security Income (SSI) Benefit Calculation Purposes—Title XVI of the Social Security Act.* When this final rule becomes effective, we will rescind AR 90–2(2) as obsolete, in accordance with 20 CFR 416.1485(e)(4).

[18] See *Diaz* v. *Chater,* No. 3:95–cv–01817–X (N.D. Tex. Apr. 17, 1996); POMS SIDAL 00835.380.

[19] 88 FR 57910.

[20] See 88 FR 57910, 57910–12 (Aug. 24, 2023).

[21] Id. at 57912–13.

[22] Id. at 57911–12. See also *Ruppert* v. *Bowen,* 871 F.2d 1172 (2d. Cir. 1989); *Jackson* v. *Schweiker,* 683 F.2d 1076 (7th Cir. 1982).

[23] See 88 FR 57912. See also *Jackson,* 683 F.2d at 1082–87.

[24] See 88 FR 57912. See also *Ruppert,* 871 F.2d at 1079–81.

[25] See 88 FR 57912. See also AR 90–2(3), 55 FR 28947, 28949 (July 16, 1990).

business arrangement.[26] We develop for rental subsidy by contacting the landlord when necessary [27] to verify (1) the monthly required rent (2) and the reason for accepting a reduced rent, if that is at issue.[28] In developing rental subsidy, we also obtain information about the CMRV from the landlord or another knowledgeable source (and will continue to do so) to determine if the CMRV is *less* than the PMV.[29]

In contrast, *rental liability* is an oral or written agreement between an individual (or the individual's spouse with whom they live or a person whose income may be deemed to the individual) and a landlord that the landlord will provide shelter in return for rent.[30] Rental liability is generally verified through oral evidence from the landlord or written evidence of the rental agreement. Rental liability is related to the development of an applicant's or recipient's living arrangement which is necessary to understand before determining if an applicant or recipient receives ISM in the form of a rental subsidy.[31] Otherwise stated, the establishment of rental liability must precede a determination of rental subsidy. When an applicant or recipient demonstrates rental liability, we find that they are living in their own household (not the household of another).[32] This determination, in turn, is central to whether we apply the value of the one-third reduction (VTR) [33] rule or PMV rule to value any ISM they receive—if an applicant or recipient is living in their own household, then the PMV rule applies to valuing ISM.[34] In other words, establishing *rental liability* is one of the threshold issues in determining an applicant's or recipient's living arrangement, which determines whether we use the VTR rule or PMV rule to value any ISM received; *rental subsidy,* on the other hand, is one type of ISM that may be applicable and developed for applicants and recipients who are not subject to the VTR rule.

Comments and Responses

Category I: Support for the Proposed Rule With No Request for Further Changes

Comment: We received 170 comments from advocacy groups and interested citizens unreservedly stating their support for our proposal to apply the rental subsidy exception nationwide. These comments did not suggest modifications to the proposed rule.

Response: We acknowledge and appreciate the support for the proposal.

Comment: Of note, many of these 170 commenters opined that adoption of the proposed rule would simplify the SSI program, advance equity, and promote uniform treatment of rental assistance for SSI recipients.

Response: As we expressed in the NPRM, these three outcomes were our primary aims in developing this rulemaking. Accordingly, we appreciate that many commenters also highlighted them as benefits of the rule.

Comment: Multiple commenters identified administrative efficiencies associated with the adoption of the proposed rule. For example, several commenters expressed that the rule would save SSA staff time, time which, in the words of one commenter, could be used to ''run the SSI program better.'' Other commenters opined on the overall positive effect the rule would have on the administrative efficiency of our programs.

Response: Since the rule will result in nationwide uniformity and require less information from some SSI applicants and recipients, we agree that, after an initial implementation period, it will increase administrative efficiency.

Comment: Many commenters urged us to move quickly to finalize and implement the regulation. They further indicated support for our efforts to update our ''financial rules'' in other ways that benefit disabled people and older adults.

Response: We are finalizing this rule and will implement it on the date specified herein. Also, as indicated by our Fall 2023 Unified Agenda,[35] we are contemplating other regulatory actions aimed at benefiting vulnerable populations.

Category II: Opposition to the Rule

Comment: We received one comment opposing any changes in SSI, including this rule, because, per the commenter, a change in SSI would ''be a hardship for my family.''

Response: The commenter did not explain specifically why they perceived that changes to the SSI program would be a hardship. Nonetheless, we note that the change will not decrease payment amounts for any individuals and might increase payment amounts for some individuals. Also, we expect the change to be simpler to understand and reduce burden for individuals reporting information.

Category III: Support for the Proposed Rule, But With Request for Additional Changes

Comment: Another commenter wrote that they ''believe that ISM rules disproportionately penalize people of color, including refugees and other recent immigrants.''

Response: SSA administers the nation's largest social welfare programs, including the SSI program that is designed to lift millions out of poverty. Our vision is to provide income security for the diverse populations we serve, including those in underserved communities, people with disabilities, workers, their families, and people who communicate primarily in languages other than English, as laid out in Social Security's Equity Action Plan 2023 Update.[36] Our intent is to serve all who apply for and all who are eligible for SSI payments, and apply our rules equally to all SSI applicants and recipients. To the extent the commenter believes ISM should be eliminated from the SSI program, that change would require Congressional action.

Comment: Multiple commenters opined on our already-existing rental-liability evidentiary requirements, which are laid out in our POMS instructions. One commenter recommended that we accept SSI applicants' and recipients' self-attestations regarding rental agreements rather than requiring formal rental agreement documentation that we then verify. Similarly, multiple commenters recommended that we not require written verification of a rental agreement because they find many agreements to be oral in nature, and it can be difficult to compel landlords to cooperate with the verification process. In that vein, many commenters encouraged us to ''follow the lead'' of the USDA Food and Nutrition Service,

[26] See POMS SI 00835.380.

[27] Based on the new rule, if the lease presented by the individual contains all necessary information (rent charged is higher or equal to the PMV), contacting the landlord is unnecessary to develop rental subsidy.

[28] See id.

[29] See id. See also 20 CFR 416.1130(b).

[30] See POMS SI 00835.020; POMS SI 00835.120.

[31] See POMS SI 00835.120A; POMS SI 00835.380B6.

[32] See POMS SI 00835.120A.

[33] When a claimant or couple lives throughout a month in another person's household and receives both food and shelter from others living in the household, we reduce the applicable FBR by one-third. This reduction in the FBR has an income value, known as the VTR or the value of the one-third reduction. See POMS SI 00835.200A.

[34] See id.

[35] See *https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=0960&csrf_token=3FE7BC5F46AC43624D85A63227874C0C8BCF6ED346AD43F4DC50FD05D9B63DC5C7005A531663BBC086DDF17A8F74A3C016A0.*

[36] See *https://www.ssa.gov/equity/assets/materials/2023.pdf.*

which, according to the commenters, does not require written verification of rent for those applying specifically for Supplemental Nutrition Assistance Program (SNAP) benefits. In contrast, one commenter asserted that our proposed rule would not work unless individuals were still required to report proof of their rental payments.

Response: As discussed above, rental liability and rental subsidy are two distinct policies. Rental liability relates to determining an applicant's or recipient's living arrangement and whether they have demonstrated that they live in their own household (and are subject to the PMV rule) or in the household of another (and potentially subject to the VTR rule). Rental subsidy, on the other hand, is a type of ISM that may be applicable depending on an applicant's or recipient's circumstances.

Regarding the comments on our development criteria for rental liability, we acknowledge the diverse viewpoints on our existing requirements. We note that we do accept statements from an applicant or recipient to establish rental liability in some circumstances—if the individual lives alone or if the only other household members are the spouse, a deemor,[37] or a child.[38] As discussed above, the purpose of verifying rental liability is to establish whether an applicant or recipient is living in their own household or the household of another (as this affects whether they are subject to the PMV rule or the VTR rule).[39] If an applicant or recipient lives alone (or only with their spouse, deemor, or any child), they live in their own household, not the household of another. However, per our current POMS policy, if the applicant or recipient lives with others, then we need additional evidence of rental liability to verify that they are not living in another person's household (and potentially subject to the VTR rule). Because the living arrangement determination is critical to how we value an applicant's or recipient's ISM, we currently do not accept self-attestations when it is not already clear from the individual's circumstances that they are living in their own household.

As for the possibility of oral rental agreements, we note that our existing rental liability verification does not require written evidence of all rental agreements. For example, we accept verbal confirmation from a landlord of a rental agreement or submission of rent receipts to establish rental liability, as long as the rent receipts satisfy certain criteria.[40]

Regarding the comments on the FNS policies for implementing their SNAP program, we note that the eligibility requirements for SSI and SNAP are not the same. Thus, it is difficult to compare point-for-point the eligibility and verification requirements for the two programs. For example, as discussed above, a critical factor that we need to determine for SSI purposes is whether an applicant or recipient is living in their own household or another person's household, as that affects whether we use the PMV rule or the VTR rule to value the individual's ISM. Our rental liability policy is designed to ensure we get the information we need to verify whether an applicant or recipient is living in their own household or the household of another person. In contrast, for example, there are SNAP requirements that appear to be more focused on verifying State residency, which is a factor more important for SNAP eligibility.[41] We note that SNAP applicants and recipients must also verify ''factors affecting the composition of a household, if questionable;'' and applicants ''who claim to be a separate household from those with whom they reside shall be responsible for proving that they are a separate household to the satisfaction of the State agency.'' [42] While the SNAP regulations do not appear to specify the type of evidence required for every eligibility factor, we note that documentation such as ''rent receipts'' and contacts with collateral sources such as ''landlords'' are included in the examples of ''sources of verification'' for SNAP eligibility requirements as well.[43] Overall, because of the differences between the programs, we are not adopting the same development processes that FNS uses to determine and verify the eligibility requirements for SNAP.

Finally, as to the commenter's statement that our rental subsidy rule ''would not work unless individuals were still required to report proof of their rental payments,'' we agree that we will continue to require information about applicants' and recipients' monthly required rent for the purposes of calculating rental subsidy ISM, when it applies.

Comment: Many commenters recommended that we accept proof of rent regardless of the format (*e.g.,* money order copies, cancelled checks, and proof of electronic payments) for purposes of rental liability verification.

Response: The NPRM and this final rule address only the definition of a business arrangement in the context of rental subsidy—not the development criteria for establishing rental liability for purposes of determining an applicant's or recipient's living arrangement. This rule does not address the evidentiary requirements associated with developing rental subsidy or rental liability, and, in fact, all current requirements are contained exclusively in our POMS. In addition, under this rule, we do not require submission of rent receipts—to make a *rental subsidy* determination, we can obtain verbal verification from the landlord of the monthly required rent.[44]

However, we note that under our current *rental liability* policy, we accept electronic payments, such as rent receipts, if they satisfy all of the criteria that we believe are necessary to adequately document rental liability. To establish rental liability, a rent receipt needs to contain the following: the individual's name, amount paid, period covered by payment, and the signature of the landlord or authorized representative.[45] We require this information for rent receipts because it enables us to confirm that the payment being made is for the individual's monthly required rent and provides sufficient information to establish a rental agreement between the individual and the landlord. Electronic payments (such as Zelle, Venmo, and PayPal) may not always satisfy the criteria. For example, these electronic payment receipts may not indicate the period covered by the payment.

Comment: One commenter recommended that we consider using the U.S. Department of Housing and Urban Development's (HUD) fair market rent data set [46] to establish market prices.

Response: We considered the recommendation but decided not to adopt it at this time. The HUD fair market rent data set might be considered

[37] ''Deeming'' is the process of considering one person's income to be counted as another person's (in this case, the SSI applicant's or recipient's) income as well. There are four categories of deemors: (1) ineligible spouse; (2) ineligible parent; (3) sponsor of an alien; and (4) essential person, as defined in 20 CFR 416.222. See *https://www.ecfr.gov/current/title-20/chapter-III/part-416/subpart-K/subject-group-ECFRdaeb44ef4120053/section-416.1160.*

[38] See POMS SI 00835.120C.

[39] See POMS SI 00835.120A.

[40] See POMS SI 00835.120D.

[41] See 7 CFR 273.2(f)(1)(vi); 7 CFR 273.3.

[42] See 7 CFR 273.2(f)(1)(x).

[43] See 7 CFR 273.2(f)(4)(i) and (ii).

[44] See POMS SI 00835.380C.

[45] See POMS SI 00835.120.

[46] HUD compiles and lists Fair Market Rents (FMR). FMRs are statistics developed by HUD to determine payments for housing assistance programs like the Section 8 housing choice voucher program. For more information, please see: *https://www.hud.loans/hud-loans-blog/what-is-fair-market-rent/.*

a knowledgeable source for the purpose of establishing the CMRV for the applicant's or recipient's rental property.[47] However, there would be advantages and disadvantages. For example, on one hand, information provided by a government agency generally is reliable, and it would be helpful to have another knowledgeable source from which to obtain relevant evidence—though, under this final rule, we will develop CMRV in the rental-subsidy context only for the limited purpose of ensuring that it is not less than the PMV, which we expect will be rare. On the other hand, due to the input requirements for the HUD database, utilizing the HUD fair market rent data set would require technicians to obtain more information from the SSI applicant or recipient—such as the number of rooms or square footage of the rental unit—which may not be readily available and is not otherwise required for SSI purposes. Therefore, instead of simplifying the development process, using the HUD database would add another layer of development that could be burdensome to the SSI applicant or recipient and cause a delay in the case being processed. We believe that those disadvantages outweigh the apparent advantages, and so we decided not to adopt the recommendation at this time.

Category IV: Comments Relating to ISM, but Outside the Scope of This Rule

Comment: One commenter suggested that SSA could use the Supplemental Nutrition Assistance Program (SNAP) standard allotment, based on family size, to determine if the amount paid for food is at market value.

Response: These comments are beyond the scope of the NPRM and final rule, as they relate to food, and the NPRM and final rule relate to rent. We note, however, that we recently published a final rule relating to the food element of ISM[48] which addresses the relevant comments that were submitted in response to the associated NPRM.

Comment: Many commenters encouraged us to ensure the rental subsidy policy extends to all SSI recipients who pay at least the PMV towards their monthly required rent.

Response: When we apply our rental subsidy policy, all SSI applicants and recipients who pay a monthly required rent, under a rental agreement, equaling or exceeding the PMV will receive the benefit of this rule (or at least will not be disadvantaged by it). As we discussed in the NPRM, one of our goals in implementing this rule is to bring nationwide uniformity to the application of our rental subsidy policy.[49]

Comment: Many commenters opined that we should revise our sub-regulatory guidance related to rental liability and simplify rental liability determinations ''to maximize the simplification effects of the rental subsidy rule.'' Specifically, they suggested that we streamline our rental liability policy, particularly for applicants and recipients who ''rent from someone with whom they live'' because ''SSI recipients who live in the same residence as their landlord must first establish rental liability before the proposed rental subsidy rule would apply.''

Response: As we noted at the outset of the comment section, simplifying the rental liability determination is separate from the new rental subsidy policy (or ensuring that it extends to all SSI applicants and recipients who pay at least the PMV). Specifically, the commenters recommend we revise our pertinent guidance to find, ''without additional development, that *rental liability* (emphasis added) exists'' for an applicant or recipient who rents from someone with whom they live ''unless the landlord is a parent or child'' of the applicant or recipient. However, this recommendation concerns our determinations about an individual's living arrangement and whether an individual has rental liability—not our rental subsidy policy, which was the intended subject of this rulemaking. Under our current POMS instructions, in certain circumstances we can rely on self-allegation of rental liability by the applicant or recipient consistent with commenters' suggestions, which we refer to in a process called ''curtailed development.'' Under curtailed development, we accept an individual's statement of rental liability in limited circumstances where it is otherwise already clear that they live in their own household, such as when an applicant or recipient lives alone.[50] However, we acknowledge that in most other circumstances we currently require additional evidence of rental liability, and we will consider commenters' feedback again if we make changes to our rental liability POMS in the future.

Comment: One commenter urged us to ''modernize the processes and systems used to make ISM determinations and calculations.''

Response: We will make the necessary systems changes to implement the final rule.

Comment: Several commenters suggested that when SSI recipients rent from someone with whom they live, SSA should find, without any additional development, that rental liability exists unless SSA has evidence to the contrary, or the landlord is a parent or child of the SSI recipient.

Response: It appears that the commenter is suggesting we accept the applicant's or recipient's allegation of rental liability without more development. However, when an applicant or recipient alleges that they are renting from someone with whom they live, under our current POMS instructions we consider this to be a ''room rental'' situation and must determine whether the applicant or recipient is in a ''separate household'' from the person from whom they are renting a room.[51] A ''separate household'' (within one home) is one that functions as a separate economic unit—if the applicant or recipient and the landlord do not function as separate economic units, the applicant or recipient is not considered to be living in a separate household, cannot have rental liability, and may be subject to the VTR rule.[52] Again, this distinction is important because whether an applicant or recipient is living in their own (separate) household or in another person's household will affect whether the VTR rule or the PMV rule applies in valuing their ISM. When an applicant or recipient is living with the person from whom they rent (*i.e.,* renting a room), under our current rental liability policy we obtain information sufficient to enable us to verify and make an accurate determination regarding the individual's living arrangement, such as contacting the landlord and obtaining information about the household organization, rent, meals, and access to the property.[53]

Comment: Several commenters recommended that we update the rules applicable to the Value of the One-Third Reduction (VTR). They suggested that we should consider that if an SSI recipient spends more than one-third of their benefits on shelter costs, the recipient should not be subject to ISM reductions. They further stated that the NPRM as written did not affect those who live in another person's household and receive both food and shelter from within that household (that is, those currently subject to ISM under the VTR rule).

[47] See id.

[48] *Omitting Food From In-Kind Support and Maintenance Calculations,* 89 FR 21199 (March 27, 2024).

[49] See 88 FR 57912–13.

[50] See POMS SI 00835.120C.

[51] See POMS SI 00835.120A4 & 00835.120E.

[52] See POMS SI 00835.120A4.

[53] See POMS SI 00835.120E.

Response: This comment is outside the scope of the NPRM and final rule. We note that the VTR is established in the Social Security Act.[54]

Comment: One commenter recommended that we educate beneficiaries and the public on the new rules and instruct field office staff to help individuals secure the benefits of the new rule.

Response: Prior to implementation, we will provide our front-line technicians with training and policy updates that state the new rule and instructions for administering the change. In addition, we are working on updating publicly accessible POMS instructions, publications, and forms.

Comment: One commenter opined that we should revise our policies on assessing ISM when calculating back awards. Specifically, the commenter expressed that we should never deduct ISM from back payments we calculate, because even people who provide food and shelter on a non-loan basis probably expect that they will be paid back once the claimant is awarded back payments. The commenter asserted that we should make this policy change via rulemaking and update our regulations, sub-regulatory guidance, and associated paperwork to apply this new policy.

Response: This commenter is asking us to revise our past ISM loan policy,[55] and this is outside the scope of the current rulemaking.

Comment: Several commenters encouraged us to go further and eliminate the ISM deduction altogether, because, in the view of these commenters, it unfairly penalizes people with disabilities for getting help obtaining shelter when they are already struggling to meet their basic needs on an insufficient income.

Response: The elimination of ISM from the SSI program would require Congressional action to change existing statutory law because ISM is established in the Social Security Act.[56] Therefore, the comment is outside the scope of the NPRM and final rule.

Commenter: The same commenter opined that, if ISM is not abolished altogether, it should only be used in cases where an equivalent market-based price is practicable to establish.

Response: See our response directly preceding this comment. Any such change would require Congressional action to amend existing statutory law.

Comment: Several commenters opined that we must increase resource and asset limits for individuals and couples.

Response: This recommendation is outside the scope of the proposed rule and the final rule, and Congressional action would be required to change the existing statutory law.[57]

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563 and Executive Order 14094

We consulted with the Office of Management and Budget (OMB), and OMB determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 and Executive Order 14094. Therefore, OMB reviewed it.

Anticipated Transfers to Our Program

Our Office of the Chief Actuary estimates that implementation of this final rule would result in a total increase in Federal SSI payments of $837 million over fiscal years 2024 through 2033, assuming implementation of this rule on September 30, 2024. These transfers reflect an estimation that approximately 41,000 individuals who would be eligible under our current rules will have their Federal SSI payment increased by an average of $132 per month in 2024 attributable to implementation of this rule. There would also be an annual average of an additional 14,000 individuals from fiscal year 2024 through 2033 who are not eligible under current rules who would be newly eligible and would receive payments under the final rule.[58]

Anticipated Net Administrative Cost Savings to the Social Security Administration

Our Office of Budget, Finance, and Management estimates that this regulation will result in net administrative savings of $10 million for the 10-year period from FY 2024 to FY 2033. The net administrative savings are mainly a result of unit time savings as field office employees will not have to spend time developing CMRV for all rental subsidy calculations during initial claims, pre-effectuation reviews, redeterminations, and post-eligibility actions. The savings are offset by costs to update our systems, costs to send notices to inform current recipients of the policy changes, costs to address inquiries from the notices, and costs because of more individuals being eligible for SSI benefits, which increases claims, reconsiderations, appeals, redeterminations, and post-eligibility actions.

Anticipated Time-Savings and Qualitative Benefits to the Public

We anticipate the following qualitative benefits generated from this policy:

- Saving time and effort for claimants and third parties who may have evidence related to a claimant's application because they would need to submit less information. We estimate at a minimum that this will result in more than 7,000 hours of time saved in annual reduced paperwork burden, representing an opportunity cost of $1,140,526 (see the Paperwork Reduction Act section of the preamble below for specifics).
- Potentially get faster determinations or decisions regarding SSI eligibility, payment amount, or both, which would have both quantitative effects financially and qualitatively may alleviate stress for applicants and recipients associated with the length of time it may take to obtain SSI.
- Administratively easier to apply the same policy nationwide.

Anticipated Qualitative Costs

We do not anticipate more than *de minimis* costs associated with this rulemaking. We do not anticipate that this final rule would affect labor market participation in any significant way, in part because of the limited understanding of the current policy in the SSI applicant and recipient community.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as meeting the criteria in 5 U.S.C. 804(2).

Executive Order 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by Executive Order 13132 and determined that this final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. We also determined that this final rule will not preempt any State law or State regulation or affect the States' abilities

[54] 42 U.S.C. 1382a(a)(2)(A).

[55] The commenter seemed to be referencing the policy found at *https://secure.ssa.gov/poms.nsf/lnx/0500835482.* Again, this is outside the scope of the current rulemaking.

[56] See 42 U.S.C. 1382a(a)(2)(A).

[57] See 42 U.S.C. 1382(a)(3)(A) & (a)(3)(B).

[58] Implementation of this final rule will cause the ISM amount charged to some individuals to decrease. If such individuals are already receiving an SSI payment under current rules, their SSI payment will increase. Individuals whose ISM under current rules causes them to be ineligible for SSI because of excess income may become eligible under this final rule, assuming they meet all other eligibility criteria.

to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This final rule does not require any new collections or revisions to existing collections. However, we anticipate the application of the revisions based on this rule will cause a burden change to our currently approved information collections under the following information collection requests: 0960–0174, the SSA–8006, Statement of Living Arrangements, In-Kind Support and Maintenance; and 0960–0454, the SSA–L5061, Letter to Landlord Requesting Rental Information. Based on our current management information data from the seven states currently implementing these changes, we anticipate these changes will allow for verbal responses from landlords in place of the current form in some situations, thus reducing the overall burden as SSA will not require those respondents to complete the entirety of Form SSA–L5061. In addition, we note that for those who use the paper form, we will send a revised version with question #5 removed. We also anticipate a slight burden reduction to Form SSA–8006, as the respondents may not need to provide as much detail pertaining to their rental subsidy agreement due to the proposed rule.

We published a notice of proposed rulemaking on August 24, 2023, at 88 FR 75910. In that NPRM, we solicited comments under the Paperwork Reduction Act (PRA) on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. The comments section above includes our responses to the PRA-related public comments we received under the NPRM.

The following chart shows the time burden information associated with the final rule:

OMB #; Form #	Number of respondents	Frequency of response	Current average burden per response (minutes)	Current estimated total burden (hours)	Anticipated new burden per response under regulation (minutes)	Anticipated estimated total burden under regulation (hours)	Estimated burden savings (hours)
0960–0174 SSA–8006 (Paper Form)	12,160	1	7	1,419	6	1,216	203
0960–0174 SSA–8006 (SSI Claims System)	109,436	1	7	12,768	6	10,944	1,824
0960–0454 SSA–L5061 (Paper Form)	35,640	1	10	5,940	8	4,752	1,188
0960–0454 SSA–L5061 (Phone Call)	35,640	1	10	5,940	3	1,782	4,158
Totals	192,876			26,067		18,694	7,373

The following chart shows the theoretical cost burdens associated with the final rule:

OMB #; Form #	Number of respondents	Anticipated estimated total burden under regulation from chart above (hours)	Average theoretical hourly cost amount (dollars) *	Average combined wait time in field office and/or teleservice centers (minutes) **	Total annual opportunity cost (dollars) ***
0960–0174 SSA–8006 (Paper Form)	12,160	1,216	* $13.30	** 19	*** $67,391
0960–0174 SSA–8006 (SSI Claims System)	109,436	10,944	* 13.30	** 24	*** 727,749
0960–0454 SSA–L5061 (Paper Form)	35,640	4,752	* 31.48	** 24	*** 598,372
0960–0454 SSA–L5061 (Phone Call)	35,640	1,782	* 31.48		*** 56,097
Totals	192,876	18,694			*** 1,449,609

* We based this figure on the average disability insurance (DI) payments based on SSA's current FY 2024 data (2024FactSheet.pdf (*ssa.gov*)); on the average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).

** We based this figure on the average FY 2024 wait times for field offices and hearings office, as well as by averaging both the average FY 2024 wait times for field offices and teleservice centers, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

SSA submitted a single new Information Collection Request which encompasses the revisions to both information collections (currently under OMB Numbers 0960–0174, and 0960–0454) to OMB for the approval of the changes due to the final rule. After approval of this information collection, we will adjust the figures associated with the current OMB numbers for these forms to reflect the new burden.

As we have revised the associated burdens for the above-mentioned forms since we made revisions to the final rule which were not included at the NPRM stage, we are currently soliciting comment on the burden for the forms as shown in the charts above. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–

2830, Email address: *OR.Reports.Clearance@ssa.gov*

You can submit comments until May 13, 2024, which is 30 days after the publication of this document. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Programs No 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

The Commissioner of Social Security, Martin O'Malley, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.

For the reasons stated in the preamble, we amend 20 CFR part 416 as set forth below:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—Income

■ 1. The authority citation for subpart K of part 416 is revised to read as follows:

Authority: 42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, 1383, and 1383b; sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. In § 416.1130, revise paragraph (b)(1) to read as follows:

§ 416.1130 Introduction.

* * * * *

(b) * * *

(1) We calculate in-kind support and maintenance considering any shelter that is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent if you are paying the amount charged under a business arrangement. A business arrangement exists when the amount of monthly required rent to be paid equals or exceeds the presumed maximum value described in § 416.1140(a)(1). If the required amount of rent is less than the presumed maximum value, we will impute as in-kind support and maintenance the difference between the required amount of rent and either the presumed maximum value or the current market rental value (see § 416.1101), whichever is less. In addition, cash payments to uniformed service members as allowances for on-base housing or privatized military housing are in-kind support and maintenance.

* * * * *

[FR Doc. 2024–07675 Filed 4–10–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–900]

Schedules of Controlled Substances: Placement of Etodesnitazene, N-Pyrrolidino Etonitazene, and Protonitazene in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final amendment; final order.

SUMMARY: With the issuance of this final order, the Administrator of the Drug Enforcement Administration is permanently placing 2-(2-(4-ethoxybenzyl)-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine (other names: etodesnitazene; etazene), 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1*H*-benzimidazole (other names: *N*-pyrrolidino etonitazene; etonitazepyne), and *N,N*-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (other name: protonitazene), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts are possible within the specific chemical designation, in schedule I of the Controlled Substances Act. This scheduling action discharges the United States' obligations under the Single Convention on Narcotic Drugs (1961). This action imposes permanent regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research or conduct instructional activities with, or possess), or handle etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene.

DATES: Effective April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION:

Legal Authority

The United States is a party to the United Nations Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 151 (Single Convention), as amended by the 1972 Protocol. Article 3, paragraph 7 of the Single Convention requires that if the Commission on Narcotic Drugs (Commission) adds a substance to one of the schedules of such Convention, and the United States receives notification of such scheduling decision from the Secretary-General of the United Nations (Secretary-General), the United States, as a signatory Member State, is obligated to control the substance under its national drug control legislation. Under 21 U.S.C. 811(d)(1) of the Controlled Substances Act (CSA), if control of a substance is required ''by United States obligations under international treaties, conventions, or protocols in effect on October 27, 1970,'' the Attorney General must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, without regard to the findings required by 21 U.S.C. 811(a) or 812(b), and without regard to the procedures prescribed by 21 U.S.C. 811(a) and (b). The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the Drug Enforcement Administration (DEA).[1]

Background

On April 12, 2022, DEA issued a temporary scheduling order, placing etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene, along with four other substances,[2] temporarily in schedule I of the Controlled Substances Act (CSA).[3] That order for etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene (codified at 21 CFR 1308.11(h)(51), (55), and (56)) was based on findings by the Administrator that the temporary

[1] 28 CFR 0.100.

[2] Those four other substances, [butonitazene, flunitazene, metodesnitazene, metonitazene], will not be discussed further in this final order.

[3] Schedules of Controlled Substances: Temporary Placement of Butonitazene, Etodesnitazene, flunitazene, Metodesnitazene, Metonitazene, *N*-Pyrrolidino etonitazene, and Protonitazene in Schedule I, 87 FR 21556 (Apr. 12, 2022).

scheduling was necessary to avoid an imminent hazard to the public safety.[4]

On November 24, 2022, the Director-General of the World Health Organization recommended to the Secretary-General that etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene be placed in Schedule I of the Single Convention, as these substances have opioid-agonist mechanism of action similar to drugs that are controlled in Schedule I of the Single Convention (*i.e.,* etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene are similar to drugs such as isotonitazene and fentanyl) and has dependence and abuse potential. On May 17, 2023, the United States government was informed by the Secretariat of the United Nations, by letter, that during its 66th session in March 2023, the Commission voted to place etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene in Schedule I of the Single Convention (CND Mar/66/2, 66/3, and 66/4).

Etodesnitazene, *N*-Pyrrolidino Etonitazene, and Protonitazene

As discussed in the background section, etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene are temporarily controlled in schedule I of the CSA upon the Administrator's finding they pose imminent hazard to the public safety. Etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene share a pharmacological profile with etonitazene (schedule I), isotonitazene (schedule I), and other schedule I and II synthetic opioids that act as mu-opioid receptor agonists. The use of these substances presents a high risk of abuse and have negatively affected users and communities due to their pharmacological similarities with etonitazene and isotonitazene (potent mu-opioid agonists). The abuse of etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene has been associated with at least 46 toxicology cases in the United States between January 2021 and April 2023. The positive identification of these substances in toxicology cases is a serious concern to the public safety.

Law enforcement reports demonstrate that etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene are being illicitly distributed and abused. The illicit use and distribution of these substances are similar to that of isotonitazene (schedule I) and prescription opioid analgesics. According to the National Forensic Laboratory Information System (NFLIS-Drug) database, which collects drug identification results from drug cases submitted to and analyzed by Federal, State and local forensic laboratories, there has been 596 reports for etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene between January 2020 and May 2023[5] (query date: May 15, 2023).

DEA is not aware of any claims or of any medical or scientific literature suggesting that etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene have a currently accepted medical use in treatment in the United States. In addition, the Department of Health and Human Services (HHS) advised DEA, by letters dated July 7 and September 10, 2021, that there were no investigational new drug applications (IND) or approved new drug applications (NDA) for etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene in the United States. Since September 10, 2021, HHS has not advised DEA of any new IND or NDA for any of these substances. Because etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene are not formulated or available for clinical use as approved medicinal products, all current use of these substances by individuals is based on their own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs.

Consistent with 21 U.S.C. 811(d)(1), DEA concludes that etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene have no currently accepted medical use in treatment in the United States[6] and are most appropriately placed permanently in schedule I of the CSA, the same schedule in which they temporarily reside at present. Because control is required under the Single Convention, DEA will not be initiating regular rulemaking proceedings to permanently schedule etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene pursuant to 21 U.S.C. 811(a).

Conclusion

In order to meet the United States' obligations under the Single Convention and because etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene have no currently accepted medical use in treatment in the United States, the Administrator has determined that etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts are possible within the specific chemical designation, should be placed permanently in schedule I of the CSA.

Requirements for Handling

Etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene have been controlled in schedule I of the CSA since April 12, 2022. Upon the effective date of this final order, etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene will be permanently subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture of, distribution of, importation of, exportation of, engagement in research or conduct of instructional activities with, and possession of, schedule I controlled substances, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, imports, exports, engages in research or conducts instructional activities with, or possesses), or who desires to handle, etodesnitazene, *N*-pyrrolidino etonitazene, or protonitazene must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. Retail sales of schedule I controlled substances to the general public are not allowed under the CSA. Possession of any quantity of these substances in a manner not authorized by the CSA is unlawful and those in possession of any quantity of these substances may be subject to prosecution pursuant to the CSA.

2. *Disposal of stocks.* Etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, state, local, and tribal laws.

3. *Security.* Etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 823, and in accordance with 21

[4] *Id.*

[5] Reports to NFLIS-Drug are still pending for 2023.

[6] HHS and DEA both applied a five-part test for currently accepted medical use as part of this scheduling action. Under that test, with respect to a drug that has not been approved by the Food and Drug Administration, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. the drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. Marijuana Scheduling Petition; Denial of Petition; Remand, 57 FR 10499 (Mar. 26, 1992), *pet. for rev. denied, Alliance for Cannabis Therapeutics* v. *Drug Enforcement Admin.,* 15 F.3d 1131, 1135 (D.C. Cir. 1994).

CFR 1301.71 through 1301.76. Non-practitioners handling etodesnitazene, *N*-pyrrolidino etonitazene, or protonitazene must comply with the employee screening requirements of 21 CFR 1301.90 through 1301.93.

4. *Labeling and packaging.* All labels, labeling, and packaging for commercial containers of etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene must comply with 21 U.S.C. 825, and be in accordance with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene in accordance with a quota assigned pursuant to 21 U.S.C. 826, and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant who possesses any quantity of etodesnitazene, *N*-pyrrolidino etonitazene, or protonitazene has been required to keep an inventory of all stocks of these substances on hand as of April 12, 2022, pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* DEA registrants must maintain records and submit reports with respect to etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene pursuant to 21 U.S.C. 827, and in accordance with 21 CFR 1301.74(b) and (c), 1301.76(b), and 1307.11 and 21 CFR parts 1304, 1312, and 1317. Manufacturers and distributors must submit reports regarding etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene to the Automation of Reports and Consolidated Order System (ARCOS) pursuant to 21 U.S.C. 827 and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* All DEA registrants who distribute etodesnitazene, *N*-pyrrolidino etonitazene, or protonitazene must continue to comply with order form requirements pursuant to 21 U.S.C. 828 and in accordance with 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene must continue to comply with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving etodesnitazene, *N*-pyrrolidino etonitazene, or protonitazene not authorized by, or in violation of the CSA, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)

This action is not a significant regulatory action as defined by Executive Order (E.O.) 12866 (Regulatory Planning and Review), section 3(f), as amended by E.O. 14094, section 1(b), and the principles reaffirmed in E.O. 13563 (Improving Regulation and Regulatory Review); and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB). This action makes no change in the status quo, as etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene are already listed as schedule I controlled substances.

Executive Order 12988, Civil Justice Reform

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This action does not have federalism implications warranting the application of E.O. 13132. This action does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications warranting the application of E.O. 13175. The action does not 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.

Administrative Procedure Act

The CSA provides for an expedited scheduling action where control is required by the United States' obligations under international treaties, conventions, or protocols. 21 U.S.C. 811(d)(1). If control is required pursuant to such international treaty, convention, or protocol, the Attorney General, as delegated to the Administrator, must issue an order controlling such drug under the schedule he deems most appropriate to carry out such obligations, and ''without regard to'' the findings and rulemaking procedures otherwise required for scheduling actions in 21 U.S.C. 811(a) and (b). *Id.*

In accordance with 21 U.S.C. 811(d)(1), scheduling actions for drugs that are required to be controlled by the United States' obligations under international treaties, conventions, or protocols in effect on October 27, 1970, shall be issued by order (as opposed to scheduling by rule pursuant to 21 U.S.C. 811(a)). Therefore, DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this scheduling action.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA or any other law. As explained above, the CSA exempts this final order from notice and comment. Consequently, the RFA does not apply to this action.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. Also, this action does not impose new or modify existing recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. However, this action does require compliance with the following existing OMB collections: 1117–0003, 1117–0004, 1117–0006, 1117–0008, 1117–0009, 1117–0010, 1117–0012, 1117–0014, 1117–0021, 1117–0023, 1117–0029, and 1117–0056. 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.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year''. Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Congressional Review Act

This order is not a major rule as defined by the Congressional Review Act (CRA), 5 U.S.C. 804. However, DEA is submitting reports under the CRA to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 5, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

For the reasons set out above, DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:

■ a. Redesignate paragraphs (b)(95) through (103) as paragraphs (b)(98) through (106);

■ b. Redesignate paragraphs (b)(69) through (94) as paragraphs (b)(71) through (96);

■ c. Redesignate paragraphs (b)(40) through (68) as paragraphs (b)(41) through (69);

■ d. Add new paragraph (b)(40), (70), and (97); and

■ e. Remove and reserve paragraphs (h)(51), (55), and (56).

The addition reads as follows:

§ 1308.11 Schedule I.

* * * * *

(b) * * *

* * * * * * *	
(40) 2-(2-(4-ethoxybenzyl)-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine (Other names: etodesnitazene; etazene)	9765
* * * * * * *	
(70) 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1*H*-benzimidazole (Other names: *N*-pyrrolidino etonitazene; etonitazepyne)	9758
* * * * * * *	
(97) *N,N*-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine (Other name: protonitazene)	9759

* * * * *

[FR Doc. 2024–07684 Filed 4–10–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–900E]

Schedules of Controlled Substances: Extension of Temporary Placement of Butonitazene, Flunitazene, and Metodesnitazene in Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Temporary rule; temporary scheduling order; extension.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this temporary scheduling order to extend the temporary schedule I status of butonitazene, flunitazene, and metodesnitazene, as identified in this order. The schedule I status of these three substances currently is in effect through April 12, 2024. This temporary order will extend the temporary scheduling of these three substances for one year, or until the permanent scheduling action for these substances is completed, whichever occurs first.

DATES: This temporary scheduling order, which extends schedule I control of three substances covered by an order (87 FR 21556, April 12, 2022), is effective April 12, 2024, and expires on April 12, 2025. If DEA publishes a final rule making this scheduling action permanent, this order will expire on the effective date of that rule, if the effective date is earlier than April 12, 2025.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: In this order, the Drug Enforcement Administration (DEA) extends the temporary scheduling of the following three controlled substances in schedule I of the Controlled Substances Act (CSA), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- butonitazene (2-(2-(4-butoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine),
- flunitazene (*N,N*-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine),
- metodesnitazene (*N,N*-diethyl-2-(2-(4-methoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine).

Background and Legal Authority

On April 12, 2022, pursuant to 21 U.S.C. 811(h)(1), DEA published an order in the **Federal Register** (87 FR 21556) temporarily placing butonitazene, flunitazene, metodesnitazene, and four [1] additional benzimidazole-opioids in schedule I of the Controlled Substances Act (CSA) based upon a finding that these substances pose an imminent hazard to the public safety. That temporary order was effective upon the date of publication.

Under 21 U.S.C. 811(h)(2), the temporary scheduling of a substance expires at the end of two years from the

[1] The four additional benzimidazole-opioids were etodesnitazene, metonitazene, *N*-pyrrolidino etonitazene, and protonitazene. DEA pursued separate scheduling actions for metonitazene, *see* 88 FR 56466 (Aug. 18, 2023), and for etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene, to remain as a schedule I substances under the CSA in order to meet the United States' obligations under the United Nations Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 151 (Single Convention), as amended by the 1972 Protocol.

date of issuance of the scheduling order, except that DEA may extend temporary scheduling of that substance for up to one year during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance. Pursuant to 21 U.S.C. 811(h)(2), the temporary scheduling of butonitazene, flunitazene, and metodesnitazene expires on April 12, 2024, unless extended.

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Administrator of DEA on her own motion under authority delegated by the Attorney General pursuant to 28 CFR 0.100, at the request of the Secretary of Health and Human Services (HHS),[2] or on the petition of any interested party.[3] The Administrator, on her own motion, has initiated proceedings under 21 U.S.C. 811(a)(1) to permanently schedule butonitazene, flunitazene, and metodesnitazene. DEA is publishing a notice of proposed rulemaking elsewhere in this issue of the **Federal Register** for the permanent placement of butonitazene, flunitazene, and metodesnitazene in schedule I elsewhere in this issue of the **Federal Register**. If that proposed rule is finalized, DEA will publish a final rule in the **Federal Register** to make permanent the schedule I status of these substances.

Pursuant to 21 U.S.C. 811(h)(2), the Administrator orders that the temporary scheduling of butonitazene, flunitazene, and metodesnitazene and their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible, be extended for one year, or until the permanent scheduling proceeding is completed, whichever occurs first.

Regulatory Matters

The CSA provides for expedited temporary scheduling actions where necessary to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h)(1), the Administrator, as delegated by the Attorney General, may, by order, temporarily place substances in schedule I. That same subsection also provides that the temporary scheduling of a substance shall expire at the end of two years from the date of the issuance of such temporary scheduling order, except that the Attorney General may, during the pendency of proceedings under 21 U.S.C. 811(a)(1) to permanently schedule the substance, extend the temporary scheduling for up to one year.

To the extent that 21 U.S.C. 811(h) directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued and extended, DEA believes that the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this extension of the temporary scheduling action. The APA expressly differentiates between orders and rules, as it defines an ''order'' to mean a ''final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency *in a matter other than rule making*.'' [4] This contrasts with permanent scheduling actions, which are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' and final decisions that conclude the scheduling process and are subject to judicial review.[5] The specific language chosen by Congress indicates an intention for DEA to proceed through the issuance of an order instead of proceeding by rulemaking. Given that Congress specifically requires the Attorney General to follow rulemaking procedures for other kinds of scheduling actions,[6] it is noteworthy that, in subsection 811(h), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

In the alternative, even if this action were subject to 5 U.S.C. 553, the Administrator finds that there is good cause to forgo the notice-and-comment requirements and the delayed effective date requirements of such section, as any further delays in the process for extending the temporary scheduling order would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety that these substances would present if scheduling expired, for the reasons expressed in the temporary scheduling order.[7]

Further, DEA believes that this order extending the temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking. Therefore, in this instance, since DEA believes this temporary scheduling action is not a ''rule,'' it is not subject to the requirements of the RFA when issuing this temporary action.

Additionally, in accordance with the principles of Executive Orders (E.O.) 12866, 13563, and 14094, this action is not a significant regulatory action. E.O. 12866 directs 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 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866. E.O. 12866, sec. 3(f), as amended by E.O. 14094, sec. 1(b), provides the definition of a ''significant regulatory action,'' requiring review by the Office of Management and Budget. Because this is not a rulemaking action, this is not a significant regulatory action as defined in section 3(f) of E.O. 12866. This action will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132 (Federalism), it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

As noted above, this action is an order, not a rule. Accordingly, the Congressional Review Act (CRA) is inapplicable, as it applies only to rules.[8] It is in the public interest to maintain the temporary placement of butonitazene, flunitazene, and metodesnitazene in schedule I because they pose a public health risk, for the reasons expressed in the temporary scheduling order.[9] The temporary scheduling action was taken pursuant to 21 U.S.C. 811(h), which is specifically designed to enable DEA to act in an expeditious manner to avoid an imminent hazard to the public safety. Under 21 U.S.C. 811(h), temporary scheduling orders are not subject to notice-and-comment rulemaking procedures. DEA understands that the CSA frames temporary scheduling actions as orders rather than rules to

[2] The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations.

[3] 21 U.S.C. 811(a).

[4] 5 U.S.C. 551(6) (emphasis added).

[5] 21 U.S.C. 811(a) and 877.

[6] *See* 21 U.S.C. 811(a).

[7] *See* 87 FR 21556 (Apr. 12, 2022).

[8] 5 U.S.C. 801, 804(3).

[9] *See* 87 FR 21556 (Apr. 12, 2022).

ensure that the process moves swiftly, and this extension of the temporary scheduling order for these three substances continues to serve that purpose. For the same reasons that underlie 21 U.S.C. 811(h), that is, the need to keep these three substances in schedule I because they pose an imminent hazard to public safety, it would be contrary to the public interest to delay implementation of this extension of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order extending the temporary scheduling order for butonitazene, flunitazene, and metodesnitazene, shall take effect immediately upon its publication.

DEA will submit a copy of this temporary order to both Houses of Congress and to the Comptroller General, although such filing is not required under the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act), 5 U.S.C. 801–808 because, as noted above, this action is an order, not a rule.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 5, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–07689 Filed 4–10–24; 8:45 am]

BILLING CODE 4410–09–P

PEACE CORPS

22 CFR Part 303

RIN 0420–AA31

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: The Peace Corps.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that the Peace Corps follows in processing requests under the Freedom of Information Act (FOIA) to comply with the FOIA Improvement Act of 2016. These amendments clarify and update procedures for requesting information from the Peace Corps and procedures that the Peace Corps follows in responding to requests from the public for information.

DATES: This rule is effective May 13, 2024.

FOR FURTHER INFORMATION CONTACT: David van Hoogstraten, 202–692–2150, *policy@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (the Act). The Act specifically requires all agencies to review and update their FOIA regulations in accordance with its provisions, and the Peace Corps is making changes to its regulations accordingly. Among other requirements, the Act addresses a range of procedural issues that affect Peace Corps FOIA regulations, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that agencies provide notice to requesters of dispute resolution services at various times throughout the FOIA process. The final rule revises and updates policies and procedures concerning the Peace Corps FOIA process, which was last published as a final rule in the **Federal Register** (FR) on April 10, 2014 (79 FR 19816), entered into effect on May 12, 2014, and currently appears at 22 CFR part 303.

The final rule makes adjustments for clarification, rearranges and redesignates sections in a more logical order, streamlines the language of some procedural provisions, and makes the following key amendments:

22 CFR Part 303

Section 303.2 is expanded to revise current definitions and add definitions for the following terms: ''Compelling need,'' ''Confidential commercial information,'' ''Direct costs,'' ''Unusual circumstances,'' and ''Initial denial authority (IDA).''

Section 303.5 is revised to delete reference to a physical public reading room and to provide for a public electronic FOIA Library on the Peace Corps website on which certain specified records will be made available. Also, related to this change, the former § 303.6 (*Procedures for use of public reading room.*) is deleted.

The former § 303.8, has been redesignated as § 303.7 and is updated to provide revised procedures for the following paragraphs:

- (b) through (d) Submitting a FOIA request;
- (f) Requesting a waiver or reduction of fees;
- (h) Initial response/delays to FOIA requests;
- (j) Giving notice of delays; and
- (l) Requesting expedited processing and appeals from denials of requests for expedited processing.

A new § 303.8 sets forth guidelines and procedures for:

- Order of response to FOIA requests;
- Multitrack processing;
- Delays in responses due to unusual circumstances and notice of such delays and of the availability of both the FOIA Public Liaison and the dispute resolution services provided for by the Office of Government Information Services (OGIS);
- Aggregating requests; and
- Expedited processing.

A revised § 303.9 provides that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

A new § 303.11 sets forth guidelines and procedures for:

- Electronic communication with requesters;
- Acknowledgement of requests that will take longer than 10 working days to process;
- Estimated dates of completion and interim responses;
- The granting of requests;
- Adverse determination of requests;
- Markings on released documents; and
- Use of records exclusions.

A renumbered § 303.13, formerly § 303.12, is updated to set forth revised guidelines and procedures for:

- Submitting appeals;
- Adjudication of appeals;
- Decisions on appeals;
- Engaging in dispute resolution services offered by OGIS; and
- When an appeal is required.

A new § 303.14 sets forth guidelines and procedures for:

- Designation of confidential commercial information;
- When notice to submitters is required;
- Exceptions to submitter notice requirements;
- Opportunity to object to disclosure;
- Analysis of objections;
- Notice of intent to disclose;
- Notice of FOIA lawsuit; and
- Requester notification.

A new § 303.15 sets forth guidelines and procedures for preserving records pertaining to the requests it receives under this subpart.

A revised § 303.16, formerly § 303.13, incorporates the new statutory

restrictions on charging fees in certain circumstances, reflects developments in the case law, and streamlines the description of the factors to be considered when making fee waiver determinations. In this regard, § 303.16(a) is revised to conform to recent appellate court decisions addressing two FOIA fee categories: ''representative of the news media'' and ''educational institution.'' Section 303.16(e)(2), which addresses restrictions on charging fees when the FOIA's time limits are not met, is revised to reflect changes made to those restrictions by the FOIA Improvement Act of 2016. Specifically, these changes reflect that the Peace Corps may not charge search fees or duplication fees for representatives of the news media and educational/non-commercial scientific institution requesters when the Peace Corps fails to comply with the FOIA's time limits. The restriction on charging fees is excused and the Peace Corps may charge fees as usual when it satisfies one of three exceptions detailed at 5 U.S.C. 552(a)(4)(A)(viii)(II) and incorporated into this section at § 303.16(e)(2)(ii) through (iv). Lastly, § 303.16(l), which addresses the requirements for a waiver or reduction of fees, is revised to specify that requesters may seek a waiver of fees and to streamline and simplify the description of the factors to be considered by the Peace Corps when making fee waiver determinations.

A redesignated § 303.17, formerly § 303.14, is updated to revise the definition of ''employee'' in this section to include volunteers and trainees of the Peace Corps for purposes only of § 303.17.

A new § 303.18 sets forth that nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Request for Comments

On November 28, 2023, the Peace Corps published a proposed rule with request for comments in the **Federal Register** at 88 FR 83044 proposing to modify the existing regulations for its procedures for disclosure of information under the FOIA. Based on feedback received and the Peace Corps' own analysis, the Peace Corps proposed several changes aimed, primarily, at clarifying language in the final rule.

Summary of Comments

During the 30-day comment period between November 28 and December 28, 2023, the Peace Corps received nine comments from three members of the public and one 501(c)(3) nonpartisan organization. At the end of the public comment period, the Peace Corps reviewed and analyzed the comments. The comments are detailed in the next section, together with a discussion of the suggestions for revision that were considered and either adopted, or declined, and the rationale, therefore. The Peace Corps did not address an issue raised by a commenter, because it considered the subject matter to be outside the scope of this rulemaking. The commenter posed a question about access to the health records of employees, which is a matter governed by the Privacy Act.

General Comments

The Peace Corps received several comments that expressed general support for the proposed regulatory changes. For example, one member of the public commended the Peace Corps for its proposed rule, stating that it ''reflects a thoughtful approach to enhancing transparency and ensuring timely responses to FOIA requests.'' However, commenters also raised concerns regarding the digitization of records and their efficient retrieval by the agency; the use of ''professional'' in 303.8(d)(3) when describing individuals who may qualify for expedited processing; the omission of a ''presumption of openness;'' the definition of certain terms; and the agency's reference to the ''Guidelines'' of the Office of Management and Budget (OMB) regarding fees.

Responses to Requests for Comments

1. Digitation of Records and Their Efficient Retrieval by the Agency

One commenter expressed, in regard to fees and information searches, that electronic systems should be established to minimize the time used to locate responsive documents. The Peace Corps agrees and is currently working to acquire an electronic discovery (eDiscovery) solution that, among other things, will improve the agency's ability to carry out its procedures for disclosure of information under the FOIA.

2. The Suggested Removal of ''Professional'' in § 303.8(d)(3)

One commentor noted the introduction of the term ''professional'' in § 303.8(d)(3) when describing individuals who may qualify for expedited processing and that it does not align with the statutory language of the FOIA, because it ''unnecessarily narrows the scope of eligible requesters and could potentially exclude individuals who, while not professionals, play a significant role in informing the public about government activities.'' The Peace Corps has adopted the suggestion of the commenter to remove ''professional'' from § 303.8(d)(3).

3. The Omission of the ''Presumption of Openness''

One commentor expressed concern regarding the Peace Corps' omission of the ''presumption of openness,'' stating that the absence of this ''critical element in the proposed rule,'' which is emphasized in the FOIA Improvement Act of 2016, ''is a notable omission that could undermine the spirt of transparency and openness that FOIA embodies.'' The Peace Corps agrees to explicitly state that the agency will administer the FOIA with a presumption of openness in the policy section, § 303.3 of this final rule.

4. Expanding the Definition of an ''Educational Institution''

One commentor indicated that the Peace Corp's definition of ''educational institution'' is too limited, as it does not account for the *members* of such institutions (*e.g.,* teachers and students) that submit FOIA requests. The commentor recommended the following definition, which the Peace Corps has adopted in this final rule, which clarifies the meaning of ''educational institution'' with regard to its implementation of the FOIA:

> *Educational institution* means any school or undergraduate, graduate, professional, or vocational institute that operates a program or programs of scholarly research, or any member of the same (including faculty or students) who seeks records in pursuit of their role at the educational institution.

5. Clarifying the Definition of a ''Representative of the News Media''

One commentor raised three separate concerns with the Peace Corps' definition of a ''representative of the news media.'' First, was the inclusion of a definition of ''news,'' which the commentor felt would emphasize the request rather than focus on the requester, which would not be in alignment with the FOIA. Although the Peace Corps' language comes directly from the statute, the agency did remove the following sentence to address the concern raised: ''The term ''news'' means information that is about current events or that would be of current interest to the public.'' The agency determined that limiting ''news'' to ''current events'' and ''current interest to the public'' was not sufficiently broad and expressly focused on the content of such related FOIA requests rather than

on the identity of the requesters as ''representatives of the news media.''

Second, the commentor encouraged the Peace Corps, with respect to its requirement that a ''representative of the news media'' use ''editorial skills to turn the raw materials [records] into a distinct work,'' to adopt a broader standard. For example, the commentor indicated that a press release commenting on records should meet this requirement. The Peace Corps has determined that it is important to retain this language in the final rule, which comes directly from the statute, in light of how information sharing has evolved in recent years.

The commentor's third point is that the definition of a ''representative of the news media'' should include ''alternative media'' and ''evolving news-media formats.'' To clarify the breadth of news media entities intended to be included in the definition, the Peace Corps has explicitly made its list of news media entities non-exhaustive.

6. Aligning Definition of a ''Record'' With the FOIA

One commentor stated that the Peace Corps' definition of a ''record'' is ''unnecessary,'' as the FOIA already defines that term, and the Peace Corps' definition is ''severely underinclusive.'' The commentor suggested either removing the definition from the final rule or replacing it with a new proposed definition that better conforms with the language in the FOIA. The Peace Corps agrees with the commentor that its definition of ''record'' in this final rule should be broader and has therefore, adopted the definition of ''record'' as set forth in the Federal Records Act of 1950, as amended, and in any other applicable Federal statute (*e.g.,* the Privacy Act of 1974, as amended).

7. Definition of ''OIG Records''

One commentor found the Peace Corps' definition of ''OIG records,'' to be ''unnecessary.'' The commentor recommended either removing the definition from the language in the final rule or striking the following two phrases from the current definition: ''in the possession'' and ''compiled for law enforcement, audit, and investigative functions and/or any other purpose authorized under the IG Act of 1978, as amended.'' The Peace Corps notes that the definition of the term ''OIG records'' was in the Peace Corps' FOIA regulation at 22 CFR part 303, which became effective in December 2003, and the recent proposed rule did not alter the definition of ''OIG records.'' Therefore, the agency has retained its longstanding definition of ''OIG records'' in this final rule.

8. Suggested Removal of Reference to the OMB Guidelines Regarding Fees

One commentor recommended the Peace Corps remove its reference in § 303.16(a) of its final rule to the White House Office of Management and Budget's *Uniform Freedom of Information Fee Schedule and Guidelines* (''OMB Guidelines''). The commentor noted that, ''although the FOIA requires an agency to promulgate a schedule of fees that ''conforms'' to the OMB Guidelines, those guidelines are not authoritative because they are not regularly updated and have historically conflicted with both the FOIA's statutory text and prevailing judicial interpretations.'' The agency has not adopted this recommendation and has retained the reference to the OMB Guidelines in § 303.16(a) of this final rule. The Peace Corps has the discretion to waive fees or not charge fees on a case-by-case basis. Each time Congress amended the FOIA, OMB has revised its Guidelines to conform with the current FOIA statute. The current OMB Guidelines were revised in 2020 after the enactment of the FOIA Improvement Act of 2016.

Regulatory Certifications

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Oder 13563, ''Improving Regulation and Regulatory Review,'' section 1(b), General Principles of Regulation, and the Peace Corps has determined it to be non-significant within the meaning of Executive Order 12866. Additionally, because this proposed rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing section 2 of the Executive order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017), supplemented by OMB's Memorandum titled ''Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs.' ''

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 22 CFR Part 303

Freedom of Information Act.

For the reasons set out in the preamble, the Peace Corps amends 22 CFR part 303 as follows:

PART 303—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

■ 1. Revise the authority citation for part 303 to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 553; 22 U.S.C. 2501 *et seq.;* 31 U.S.C. 3717.

■ 2. Revise § 303.2 to read as follows:

§ 303.2 Definitions.

Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester has made a commercial use request, the Peace Corps will look to the use to which a requester will put the documents requested. When the Peace Corps has reasonable cause to doubt the requester's stated use of the records sought, or where the use is not clear from the request itself, it will seek

additional clarification before assigning the request to a category.

Compelling need means:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(2) An urgency to inform the public about an actual or alleged Peace Corps or Federal Government activity and the request is made by a person primarily engaged in disseminating information; or

(3) A matter of widespread and exceptional media interest in which there exist possible questions about the Peace Corps' or the Federal Government's integrity which affect public confidence.

Confidential commercial information means commercial or financial information obtained by the Peace Corps from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

Direct costs are those expenses that the Peace Corps incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses, such as the costs of space, and of heating or lighting a facility.

Duplication means the process of making a copy of a record requested pursuant to this part. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable electronic documents, among others.

Educational institution means any school or undergraduate, graduate, professional, or vocational institute that operates a program or programs of scholarly research, or any member of the same (including faculty or students) who seeks records in pursuit of their role at the educational institution.

Expedited processing means the process set forth in the FOIA that allows requesters to ask for expedited processing of their FOIA request if they can demonstrate a compelling need.

Fee waiver means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

FOIA Public Liaison means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Non-commercial scientific institution means an institution that is not operated on a ''commercial'' basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

OIG records mean those records as defined generally in this section which originated with or are in the possession and control of the Office of Inspector General (OIG) of the Peace Corps which have been compiled for law enforcement, audit, and investigative functions and/or any other purpose authorized under the IG Act of 1978, as amended.

Records as set forth in the Federal Records Act of 1950, as amended, at 44 U.S.C. 3301, and in any other applicable federal statute (*e.g.,* the Privacy Act of 1974, as amended).

Representative of the news media is any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. Examples of news media entities include, but are not limited to, television or radio stations that broadcast news to the public at large and publishers of periodicals that disseminate news and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, components shall also consider a requester's past publication record in making this determination.

Requester category means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication, including commercial requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters.

Review means the process of examining a document located in response to a request to determine whether any portion of such document is exempt from disclosure. It also includes processing any such document for disclosure. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means the process of looking for and retrieving records that are responsive to a request for records. It includes page-by-page or line-by-line identification of material within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Searches may be conducted manually or by automated means and will be conducted in the most efficient and least expensive manner. If the agency cannot identify the requested records after a 2 hour search, it can determine that the records were not adequately described and ask the requester to provide a more specific request.

Submitter means any person or entity, including a corporation, state, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

Unusual circumstances, as used in this part, mean circumstances attending a request for information and are limited to the following, but only to the extent reasonably necessary for the proper processing of the particular request:

(1) The need to search for and collect the requested records from offices or locations that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency or organization having a substantial interest in the determination of the request or among two or more offices of the Peace Corps having a substantial subject matter interest therein.

Initial denial authority (IDA) is an official who has been granted authority as the FOIA Officer who may deny FOIA requests of the Peace Corps based on one or more of the nine categories of exemptions from mandatory disclosure. An IDA also: denies a fee category claim by a requester; denies a request for expedited processing due to demonstrated compelling need; denies a request for a waiver or reduction of fees;

reviews a fee estimate; and confirms that no records were located in response to a request.

■ 3. Revise § 303.3 to read as follows:

§ 303.3 Policy.

(a) The Peace Corps will administer the FOIA with a presumption of openness. The Peace Corps will make its records concerning its operations, activities, and business available to the public, consistent with the requirements of the FOIA. The agency will also consider whether partial disclosure of information is possible whenever it determines that a full disclosure of a requested record is not possible. This includes taking reasonable steps to segregate and release nonexempt information.

(b) Records that the FOIA requires agencies to make available for public inspection in an electronic format may be accessed through the Peace Corps' website. The Peace Corps FOIA Office is responsible for determining which of its records must be made publicly available (including frequently requested records), identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. The Peace Corps will ensure that its website of posted records and indices is reviewed and updated on an ongoing basis. The Peace Corps has a FOIA Public Liaison who can assist individuals in locating records.

(c) In accordance with 5 U.S.C. 552(a)(8), the Peace Corps may make discretionary disclosures of records or information, without a formal FOIA request and that may be exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption and disclosure is not prohibited by law. However, this policy does not create any enforceable right in a court of law or any other tribunal.

(d) Requests for records of the Office of Inspector General (OIG records), as defined in § 303.2, and appeals from denials of requests for OIG records are subject to this policy and will be granted or denied consistent with § 303.10(b) through (c) through their own FOIA adjudication process.

■ 4. Revise § 303.5 to read as follows:

§ 303.5 FOIA Library.

(a) The public reading room is no longer physically available. The Peace Corps makes information available to the public electronically through the Peace Corps' FOIA Library on its public website at *https://www.peacecorps.gov/about/open-government/.*

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be made available in the FOIA Library:

(1) All final public opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases that involve the Peace Corps;

(2) Statements of policy and interpretations adopted by the Peace Corps that are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) Copies of frequently requested records, regardless of form or format, with a general index of such records:

(i) Released to any person in response to a public request for records which the Peace Corps determines are likely to become subject to subsequent requests for substantially the same records or

(ii) For which there have been 3 or more requests;

(5) The index required by § 303.6; and

(6) Other records the Peace Corps has determined are of general interest to members of the public in understanding activities of the Peace Corps or in dealing with the Peace Corps in connection with those activities.

(c) Records required by the FOIA to be available in the FOIA Library may be exempt from mandatory disclosure pursuant to section 552(b) of the FOIA. Such records will not be made available in the FOIA Library. Other records maintained in the FOIA Library may be edited by the redaction of information protected under section 552(b) of the FOIA. The extent of the redaction shall be indicated, unless doing so would harm an interest protected by the exemption under which the redaction is made. If technically feasible, the extent of the redaction shall be indicated at the place in the record where the redaction was made.

(d) Records required by the FOIA to be maintained shall be made available in the Peace Corps' electronic FOIA Library.

(e) Most public electronic records will also be made available to the public on the Peace Corps website at *https://www.peacecorps.gov.*

§ 303.6 [Removed]

■ 5. Remove § 303.6.

§§ 303.7 and 303.8 [Redesignated as §§ 303.6 and 303.7]

■ 6. Redesignate §§ 303.7 and 303.8 as §§ 303.6 and 303.7, respectively.

■ 7. Revise newly redesignated § 303.7 to read as follows:

§ 303.7 Requests for records.

(a) Except for records required by the FOIA to be published in the **Federal Register** or to be made available in the FOIA Library, Peace Corps records will be made promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA.

(b) Requests for records under this section shall be:

(1) Made in writing, shall include the name of the requester, and the envelope, email, and/or the letter shall be clearly marked ''Freedom of Information Request.'' All such requests shall be addressed to the FOIA Officer. Requests by letter shall be directed to Peace Corps FOIA Officer, 1275 First Street NE, Washington DC 20526. Requests by email shall be directed to *FOIA@peacecorps.gov.* Any request not marked and addressed as specified in this paragraph will be so marked by Peace Corps personnel as soon as it is properly identified and will be forwarded immediately to the FOIA Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set out in paragraph (h) of this section until it has been received by the FOIA Officer. Upon receipt of an improperly addressed request, the FOIA Officer shall notify the requester of the date on which the time period began. All paper requests shall be stamped ''received'' on the date it is received by the FOIA Officer. Electronic requests are deemed to be ''received'' on the date in which the FOIA Officer acknowledges receipt.

(2) A request must reasonably describe the records requested so that employees of the Peace Corps who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Peace Corps personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph (b).

(c) The Peace Corps requires that first-party requesters provide the following information so that the Peace Corps can protect the personal information found in its files and ensure that records are disclosed only to the proper persons: the requester's full name, current address, citizenship or legal permanent resident alien status, date and place of birth (city, state, and country), and a

copy of a photo ID. A first-party request must be signed, and the requester's signature must be either notarized or made under penalty of perjury pursuant to 28 U.S.C. 1746 as a substitute for notarization. A requester may request this penalty of perjury statement from the FOIA office to complete for submission.

(d) To facilitate the location of records by the Peace Corps, a requester should try to provide the following kinds of information, if known:

(1) The specific event or action to which the record refers;

(2) The unit or program of the Peace Corps which may be responsible for or may have produced the record;

(3) The date of the record or the date or period to which it refers or relates;

(4) The type of record, such as an application, a particular form, a contract, or a report;

(5) Personnel of the Peace Corps who may have prepared or have knowledge of the record; or

(6) Citations to newspapers or publications which have referred to the record.

(e) The Peace Corps is not required to create a record or to perform research to satisfy a request.

(f) Any request for a waiver or reduction of fees should be included in the FOIA request, and any such request should indicate the grounds for a waiver or reduction of fees, as set out in § 303.16(k).

(g) The Peace Corps will provide records in the form or format indicated by the requester to the extent such records are readily reproducible in the requested form or format.

(h)(1) The FOIA Officer or OIG FOIA Officer, upon request for any records made in accordance with this section, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request, except for unusual circumstances, as defined in § 303.2, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(2) If the FOIA Officer determines that a request or portion thereof is for OIG records, the FOIA Officer shall promptly refer the request or portion thereof to the OIG FOIA Officer and send notice of such action to the requester. In such case, the OIG FOIA Officer shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

(i) If a request is particularly broad or complex so that it cannot be completed within the time periods stated in paragraph (h) of this section, the Peace Corps may ask the requester to narrow the request or agree to an additional delay.

(j) When no determination can be dispatched within the applicable time limit, the FOIA Officer or the OIG FOIA Officer shall inform the requester of the reason for the delay, the date on which a determination may be expected to be dispatched, and the requester's right to treat the delay as a denial and to appeal to the Associate Director for the Office of Management or the Inspector General, in accordance with § 303.13. If no determination has been dispatched by the end of the 20-day period, or the last extension thereof, the requester may deem the request denied, and exercise a right of appeal in accordance with § 303.13. The FOIA Officer or the OIG FOIA Officer may ask the requester to forego an appeal until a determination is made.

(k) After it has been determined that a request will be granted, the responsible official will act with due diligence in providing a prompt response.

(l)(1) Requests and appeals will be taken out of order and given expedited treatment whenever the requester demonstrates a compelling need as defined in § 303.2.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be properly addressed and marked and received by the Peace Corps pursuant to § 303.7(b).

(3) A requester who seeks expedited processing must submit a statement demonstrating a compelling need, as defined in § 303.2, that is certified by the requester to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within 10 business days of its receipt of a request for expedited processing, the FOIA Officer or the OIG FOIA Officer shall decide whether to grant the request and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

(5) Appeals regarding expedited processing denials shall be made to the Associate Director for the Office of Management, or in the case of a denial by the OIG FOIA Officer of a request for expedited processing, the Inspector General, who shall respond within 10 business days of receipt of the appeal.

■ 8. Add § 303.8 to read as follows:

§ 303.8 Timing of responses to requests.

(a) *In general.* The Peace Corps ordinarily will respond to requests according to their order of receipt. The response time will commence on the date that the request is received by the Peace Corps' FOIA Officer or by the OIG FOIA Officer.

(b) *Multitrack processing.* The Peace Corps designates a specific track for requests that are granted expedited processing in accordance with the standards set forth in paragraph (e) of this section. The Peace Corps may also designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors the Peace Corps may consider are the number of records requested, the number of pages involved in processing the request and the need for consultations or referrals. The Peace Corps will advise requesters of the track into which their request falls and, when appropriate, should offer the requesters an opportunity to narrow or modify their request so that it can be placed in a different processing track.

(c) *Unusual circumstances.* Whenever the Peace Corps cannot meet the time limit for processing a request because of unusual circumstances as defined in § 303.2 and the Peace Corps extends the time limit on that basis, the Peace Corps will, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which the Peace Corps estimates processing of the request will be completed. Where the extension exceeds 10 working days, the Peace Corps will provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The Peace Corps will make available its designated FOIA contact or its FOIA Public Liaison for this purpose. The Peace Corps FOIA Public Liaison is identified on the agency's FOIA Open Government web

page *https://www.peacecorps.gov/about/open-government/foia/* and is available at *FOIA@peacecorps.gov.* The Peace Corps will also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

(d) *Aggregating requests.* To address unusual circumstances as defined in § 303.2, the Peace Corps may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The Peace Corps will not aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) The Peace Corps will process requests and appeals on an expedited basis whenever it is determined that they involve a compelling need as defined in § 303.2.

(2) A request for expedited processing of a request for information may be made at any time and submitted to the Peace Corps FOIA Officer or to the OIG FOIA Officer in the case of a request concerning OIG records. When making a request for expedited processing of an administrative appeal, the request should be submitted to the Associate Director for the Office of Management, or in the case of an appeal concerning OIG records, the Inspector General.

(3) A requester who seeks expedited processing will submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, in § 303.2, paragraph (2) of the definition for compelling need, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject may be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, the Peace Corps may waive the formal certification requirement.

(4) The Peace Corps will notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request will be given priority, placed in the processing track for expedited requests, and processed as soon as practicable. If a request for expedited processing is denied, the Peace Corps will act on any appeal of that decision expeditiously.

■ 9. Amend § 303.9 by revising paragraphs (a) introductory text, (a)(5), and paragraph (b) introductory text to read as follows:

§ 303.9 Exemptions for withholding information.

(a) The Peace Corps may withhold information in part or in its entirety using FOIA exemptions listed in 5 U.S.C. 552 (b), when the Initial Denial Authority (IDA) reasonably foresees that the disclosure of such information would cause harm to an interest protected by the exemption or exemptions, or if disclosure is prohibited by law. The Peace Corps will take reasonable steps necessary to segregate and release nonexempt information. The Peace Corps may withhold a requested record from public disclosure only if the record fits within one or more of the following FOIA exemptions:

* * * * *

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Peace Corps, except that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

* * * * *

(b) The IDA may also withhold information applicable under the Privacy Act of 1974, 5 U.S.C. 552a(j) and (k) when the records are managed within a system of records; see 22 CFR part 308.

* * * * *

■ 10. Amend § 303.10 by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 303.10 Responsibilities and authorities.

* * * * *

(c) *Authority to grant or deny appeals.* The Associate Director for the Office of Management is authorized to grant or deny appeals under § 303.13(a) through (c) except in the case of appeals from denials of requests for OIG records. The Inspector General is authorized to grant or deny appeals under § 303.13(a) through (c) from denials of requests for OIG records. Both the Associate Director for the Office of Management and the Inspector General shall follow this part in processing appeals.

* * * * *

§§ 303.13 and 303.14 [Redesignated as §§ 303.16 and 303.17]

■ 11. Redesignate §§ 303.13 and 303.14 as §§ 303.16 and 303.17, respectively.

§§ 303.11 and 303.12 [Redesignated as §§ 303.13 and 303.14]

■ 12. Redesignate §§ 303.11 and 303.12 as §§ 303.13 and 303.14, respectively

■ 13. Add § 303.11 to read as follows:

§ 303.11 Responses to requests.

(a) *In general.* The Peace Corps, to the extent practicable, will communicate with requesters having access to the internet electronically, such as email or web portal.

(b) *Acknowledgments of requests.* The Peace Corps will acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. The Peace Corps will include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Estimated dates of completion and interim responses.* Upon request, the Peace Corps will provide an estimated date by which the Peace Corps expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the Peace Corps may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once the Peace Corps determines it will grant a request in full or in part, it will notify the requester in writing. The Peace Corps will also inform the requester of any fees charged under § 303.16 and will disclose the requested records to the requester promptly upon payment of any applicable fees. The Peace Corps will inform the requester of the availability of its FOIA Public Liaison to offer assistance.

(e) *Adverse determinations of requests.* If the Peace Corps makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily

reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(f) *Markings on released documents.* The Peace Corps will release any reasonably segregable portion of a record after redaction of the exempt portions. The amount of information redacted and the exemption under which the redaction is made shall be indicated on the released portion of the record unless doing so would harm an interest protected by an applicable exemption. The location of the information redacted will also be indicated on the record, if technically feasible.

(g) *Use of record exclusions.* (1) In the event that the Peace Corps identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the Peace Corps will confer with Department of Justice, Office of Information Policy (OIP), prior to application of the exclusion.

(2) The Peace Corps, when invoking an exclusion, should document its consultation with OIP.

■ 14. Revise newly redesignated § 303.12 to read as follows:

§ 303.12 Denials.

(a) A denial of a written request for a record or information that complies with the requirements of § 303.7 shall be in writing and shall include, as applicable:

(1) The name and title or position of the responsible IDA;

(2) The signature of the agency's FOIA Officer, or in the case of denials of requests concerning OIG records, the signature of the Inspector General or designee;

(3) A brief statement of the reasons for the denial, including any FOIA exemption applied in denying the request;

(4) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by redactions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(5) For any information denied under Exemption 3, the specific statute relied upon to deny the information along with a short description of the statute;

(6) A statement that the requester must appeal no later than 90 days after the date of the denial and along with instructions on how to appeal to the appellate authority. The instructions will include the appellate authority's duty title, the mailing address for the appeal, and instructions on how the requester can appeal electronically; as defined under § 303.13; and

(7) A statement notifying the requester of the assistance available from the Peace Corps' FOIA Public Liaison and the dispute resolution services offered by OGIS.

(b) [Reserved]

■ 15. Revise newly redesignated § 303.13 to read as follows:

§ 303.13 Appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to the Associate Director of the Office of Management or, in the case of a denial of a request for OIG records, the Inspector General. Examples of adverse determinations are provided in § 303.11(e). Requesters can submit appeals by mail or online in accordance with the following requirements or with those on the Peace Corps' website. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the response. The appeal should clearly identify the Peace Corps' determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(b) *Adjudication of appeals.* (1) The Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will consider all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the Associate Director of the Office of Management, or in the case of a denial of a request for OIG records, the Inspector General, will take appropriate action to ensure compliance with applicable classification rules.

(c) *Decisions on appeals.* The Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will provide the decision on an appeal in writing. A decision that upholds a determination in whole or in part will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the dispute resolution services offered by the OGIS of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a decision is remanded or modified on appeal, the Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will notify the requester of that determination in writing. The Associate Director of the Office of Management or designee, or in the case of a denial of a request for OIG records, the Inspector General or designee, will then further process the request in accordance with that appeal determination and will respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If the Peace Corps agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When an appeal is required.* Before seeking review by a court of a Peace Corps' adverse determination, a requester generally will first submit a timely administrative appeal.

■ 16. Add § 303.14 to read as follows:

§ 303.14 Confidential commercial information.

(a) *Designation of confidential commercial information.* A submitter of confidential commercial information as defined in § 303.2 will use good faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(b) *When notice to submitters is required.* (1) The Peace Corps will promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if the Peace Corps determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered

protected from disclosure under Exemption 4; or

(ii) The Peace Corps has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but it has not yet determined whether the information is protected from disclosure.

(2) The notice will either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, the Peace Corps may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(c) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) The Peace Corps determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, the Peace Corps will give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(d) *Opportunity to object to disclosure.* (1) The Peace Corps will specify a reasonable time period within which the submitter may respond to the notice referenced in paragraph (b) of this section.

(2) If a submitter has any objections to disclosure, it should provide the Peace Corps a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter will explain why the information constitutes a trade secret or commercial or financial information that is commercially confidential.

(3) A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. The Peace Corps is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this part may itself be subject to disclosure under the FOIA.

(e) *Analysis of objections.* The Peace Corps will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(f) *Notice of intent to disclose.* Whenever the Peace Corps decides to disclose information over the objection of a submitter, the Peace Corps will provide the submitter written notice, which will include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the Peace Corps intends to release them; and

(3) A specified disclosure date, which will be a reasonable time after the notice.

(g) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Peace Corps will promptly notify the submitter.

(h) *Requester notification.* The Peace Corps will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

■ 17. Add § 303.15 to read as follows:

§ 303.15 Preservation of records.

The Peace Corps will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. The Peace Corps will not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

■ 18. Revise newly redesignated § 303.16 to read as follows:

§ 303.16 Fees.

(a) *In general.* The Peace Corps will charge for processing requests under the FOIA in accordance with the provisions of this section and with the Guidelines of OMB. For purposes of assessing fees, the FOIA establishes three categories of requesters:

(1) Commercial use requesters;

(2) Non-commercial scientific or educational institutions or news media requesters; and

(3) All other requesters.

(b) *Fee assessment.* Different fees are assessed depending on the requester category and approved by the FOIA Officer. Requesters may seek a fee waiver. The Peace Corps will consider individual requests for fee waivers in accordance with the requirements in paragraph (l) of this section. To resolve any fee issues that arise under this section, Peace Corps may contact a requester for additional information. The Peace Corps will ensure that searches, reviews, and duplications are conducted in the most efficient and the least expensive manner. The Peace Corps ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters will pay fees by check or money order made payable to the Treasury of the United States, or by another method as determined by the Peace Corps.

(c) *Fee charging considerations.* (1) Whether the request is a commercial use request as defined in § 303.2. The Peace Corps' decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. The Peace Corps will notify requesters of their placement in this category.

(2) The sum of direct costs as defined in § 303.2.

(3) The cost of duplication as defined in § 303.2.

(4) Whether the requester is an educational institution as defined in § 303.2. A requester in this fee category will show that the request is made in connection with his or her role at the educational institution. The Peace Corps may seek verification from the requester that the request is in furtherance of scholarly research, and the Peace Corps will advise requesters of their placement in this category.

Example 1 to paragraph (c)(4). A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

Example 2 to paragraph (c)(4). A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

Example 3 to paragraph (c)(4). A student who makes a request in

furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(5) Whether the requester is a noncommercial scientific institution as defined in § 303.2. A requester in this category will show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use. The Peace Corps will advise requesters of their placement in this category.

(6) Whether the requester is a representative of the news media as defined in § 303.2. Examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Peace Corps may also consider a requester's past publication record in making this determination. The Peace Corps will advise requesters of their placement in this category.

(7) The cost of the review as defined in § 303.2. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 303.14, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) The cost of the time involved in the search as defined in § 303.2. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(d) *Charging fees.* In responding to FOIA requests, the Peace Corps will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (l) of this section. Because the fee amounts provided under paragraph (m) of this section already account for the direct costs associated with a given fee type, the Peace Corps will not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. The Peace Corps will charge search fees for all other requesters, subject to the restrictions of paragraph (e) of this section. The Peace Corps may properly charge for time spent searching even if they do not locate any responsive records or if they determine that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be charged.

(iii) The Peace Corps will charge the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. The Peace Corps will notify the requester of the costs associated with creating such a program, and the requester will agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by the Peace Corps at a Federal records center operated by the National Archives and Records Administration (NARA), agencies will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* The Peace Corps will charge duplication fees to all requesters, subject to the restrictions of paragraph (e) of this section. The Peace Corps will honor a requester's preference for receiving a record in a particular form or format where the Peace Corps can readily reproduce it in the form or format requested. Where photocopies are supplied, the Peace Corps will provide one copy per request at no charge up to 100 pages. For copies of records produced on tapes, disks, or other media, the Peace Corps will charge the direct costs of producing the copy, including operator time. Where paper documents will be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester will also pay the direct costs associated with scanning those materials. For other forms of duplication, the Peace Corps will charge the direct costs.

(3) *Review.* The Peace Corps will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted by the Peace Corps to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the Peace Corps' re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (d)(1)(ii) of this section.

(e) *Restrictions on charging fees.* (1) When the Peace Corps determines that a requester is an educational institution, non-commercial scientific institution, or representative of the news media, and the records are not sought for commercial use, it will not charge search fees.

(2)(i) If the Peace Corps fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (e)(1) of this section, may not charge duplication fees, except as described in (e)(2)(ii) through (iv) of this section.

(ii) If the Peace Corps has determined that unusual circumstances as defined in § 303.2 apply and the Peace Corps provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(iii) If the Peace Corps has determined that unusual circumstances as defined in § 303.2 apply and more than 5,000 pages are necessary to respond to the request, the Peace Corps may charge search fees, or, in the case of requesters described in paragraph (e)(1) of this section, may charge duplication fees, if the following steps are taken: the Peace Corps will have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA; and the Peace Corps will have discussed with the requester via written mail, email, or telephone (or made not less than three good faith attempts to do so) how the requester could effectively limit

the scope of the request in accordance with 5. U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Peace Corps may charge all applicable fees incurred in the processing of the request.

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, the Peace Corps will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first 2 hours of search.

(5) No fee will be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first 2 hours of search, is equal to or less than $25.

(f) *Notice of anticipated fees in excess of $25.00.* (1) When the Peace Corps determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the Peace Corps will notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the Peace Corps will advise the requester accordingly. If the request is not for noncommercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, 2 hours of search time at no charge, and will advise the requester whether those entitlements have been provided.

(2) If the Peace Corps notifies the requester that the actual or estimated fees are in excess of $25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester will provide the commitment or designation in writing, and will, when applicable, designate an exact dollar amount the requester is willing to pay. The Peace Corps will not accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Peace Corps estimates that the total fee will exceed that amount, the Peace Corps will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Peace Corps will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Peace Corps will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(g) *Charges for other services.* Although not required to provide special services, if the Peace Corps chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(h) *Charging interest.* The Peace Corps may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the Peace Corps. The Peace Corps will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Aggregating requests.* When the Peace Corps reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Peace Corps may aggregate those requests and charge accordingly. The Peace Corps may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, the Peace Corps will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(j) *Advance payments.* (1) For requests other than those described in paragraph (j)(2) or (j)(3) of this section, the Peace Corps may not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When the Peace Corps determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Peace Corps may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to the Peace Corps within 30 calendar days of the billing date, the Peace Corps may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the Peace Corps may require that the requester make an advance payment of the full amount of any anticipated fee before the Peace Corps begins to process a new request or continues to process a pending request or any pending appeal. Where the Peace Corps has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the Peace Corps requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of the Peace Corps' fee determination, the request will be closed.

(k) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires the Peace Corps to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the Peace Corps will inform the requester of the contact information for that program.

(l) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information

is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The Peace Corps will furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (l)(2)(i) through (iii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request will concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated; and

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records will be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding; and

(B) The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public will be considered. The Peace Corps will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure will not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Peace Corps will consider the following criteria:

(A) The Peace Corps will identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters will be given an opportunity to provide explanatory information regarding this consideration; and

(B) If there is an identified commercial interest, the Peace Corps will determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (l)(2)(i) and (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The Peace Corps ordinarily will presume that when a news media requester has satisfied factors of paragraphs (l)(2)(i) and (ii), the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Peace Corps and should address the criteria referenced under paragraph (1) of this section. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will pay any costs incurred up to the date the fee waiver request was received.

(5) These fee waiver/reduction provisions are subject to appeal in the same manner as appeals from denial under § 303.13.

(m) *Minimal amount.* No fee will be charged under this section unless the cost of routine collection and processing of the fee payment is likely to exceed the average cost of processing a payment.

(n) *Agreement to pay fees.* Requesters must agree to pay all fees charged for services associated with their requests.

(o) *Charging interest.* Interest may be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(p) *Nonpayment of fees.* The Peace Corps is not required to process a request for a requester who has not paid FOIA fees owed to another Federal agency.

(q) *Multiple copies.* The Peace Corps reserves the right to charge for multiple copies of any document that will be provided to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

■ 19. Amend newly redesignated § 303.17 by revising paragraphs (a)(1) through (6) and (b)(1) through (3) to read as follows:

§ 303.17 Procedures for responding to a subpoena.

(a) * * *

(1) This section sets forth the procedures to be followed in proceedings in which the Peace Corps is not a party, whenever a subpoena, order, or other demand (collectively referred to as a ''demand'') of a court or other authority is issued for:

(i) The production or disclosure of any material contained in the files of the Peace Corps;

(ii) The production or disclosure of any information relating to material contained in the files of the Peace Corps;

(iii) The production or disclosure of any information or material acquired by any person while such person was an employee of the Peace Corps as a part of the performance of their official duties or because of their official status, or

(iv) The production of an employee of the Peace Corps for the deposition or an appearance as a witness in a legal action or proceeding.

(2) For purposes of this section, the term ''employee of the Peace Corps'' includes all officers, employees, volunteers, and trainees of the Peace Corps appointed by, or subject to the supervision, jurisdiction or, control of, the Director of the Peace Corps, including personal services contractors. Also, for purposes of this section, records of the Peace Corps do not include records of the Office of Inspector General.

(3) This section is intended to provide instructions regarding the internal operations of the Peace Corps, and is not intended, and does not and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by a party against the Peace Corps.

(4) This section applies to:

(i) State and local court, administrative and legislative proceedings; and

(ii) Federal court and administrative proceedings.

(5) This section does not apply to:

(i) Congressional requests or subpoenas for testimony or documents; and

(ii) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not

relate to the Peace Corps (such as cases arising out of traffic accidents or domestic relations). Any questions regarding whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the Office of the General Counsel.

(6) Nothing in this section otherwise permits disclosure of information by the Peace Corps except as is provided by statute or other applicable law.

(b) * * *

(1) No employee or former employee of the Peace Corps shall, in response to a demand of a court or other authority set forth in paragraph (a) of this section produce any material, disclose any information, or appear in any proceeding, described in paragraph (a) of this section without the approval of the General Counsel or designee.

(2) Whenever an employee or former employee of the Peace Corps receives a demand for the production of material or the disclosure of information described in paragraph (a) of this section they shall immediately notify and provide a copy of the demand to the General Counsel or designee. The General Counsel, or designee, shall be furnished by the party causing the demand to be issued or served a written summary of the information sought, its relevance to the proceeding in connection with which it was served, and why the information sought is unavailable by any other means or from any other sources.

(3) The General Counsel, or designee, in consultation with appropriate Peace Corps officials, including the Peace Corps' FOIA Officer, or designee, and in light of the considerations listed in paragraph (d) of this section, will determine whether the person on whom the demand was served should respond to the demand.

* * * * *

■ 20. Add § 303.18 to read as follows:

§ 303.18 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Dated: March 27, 2024.

James Olin,

FOIA and Privacy Officer.

[FR Doc. 2024–06800 Filed 4–10–24; 8:45 am]

BILLING CODE 6051–01–P

DEARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0221]

Special Local Regulations; Marine Events Within the Captain of the Port Charleston

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Charleston Race Week in Charleston, SC, to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within the Captain of the Port Charleston identifies the regulated area for this event in Charleston, SC. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the designated area unless authorized by the Captain of the Port Charleston (COTP) or a designated representative.

DATES: The regulations in 33 CFR 100.704 will be enforced for the regulated area listed in Item No. 2 in Table 1 to § 100.704 from 9 a.m. to 5 p.m. on April 18, 2024, through April 21, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Chief Marine Science Technician Tyler M. Campbell, Sector Charleston, Waterways Management Division, U.S. Coast Guard; telephone (843) 740–3184, email *Tyler.M.Campbell@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.704 for the Annual Charleston Race Week event regulated area identified in Table 1 to § 100.704, Item No. 2 from 9 a.m. to 5 p.m. on April 18, 2024, through April 21, 2024. This action is being taken to provide for the safety of life on navigable waterways during this 4-day event. Our regulation for marine events within the Seventh Coast Guard District, § 100.704, specifies the location of the regulated area for the Charleston Race Week which encompasses portions of Charleston Harbor. During the enforcement periods, as reflected in § 100.704(c), all persons and vessels are prohibited from entering the regulated area, except those persons and vessels participating in the event, unless they receive permission to do so from the Coast Guard Patrol Commander, or designated representative. During the enforcement periods, as reflected in § 100.704(c), spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, impede the transit of participants or official patrol vessels or enter the regulated area without approval from the Coast Guard Patrol Commander or a designated representative.

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 will provide notice of the regulated area via Local Notice to Mariners, Marine Safety Information Bulletins, Broadcast Notice to Mariners, and on-scene designated representatives.

Dated: April 5, 2024.

F.J. DelRosso,

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

[FR Doc. 2024–07628 Filed 4–10–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0321; FRL–11813–01–OCSPP]

Silane, Hexadecyltrimethoxy-, Hydrolysis Products With Silica in Pesticide Formulations; Pesticide Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of silane, hexadecyltrimethoxy-, hydrolysis products with silica (CAS Reg. No. 199876–45–4) when used as an inert ingredient (Pickering emulsion) on growing crops and raw agricultural commodities pre- and post-harvest at no more than 0.6% by weight of the pesticide formulation. Evonik Corporation, 299 Jefferson Road, Parsippany, NJ 07054 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of silane, hexadecyltrimethoxy-, hydrolysis products with silica, when used in accordance with the terms of this exemption.

DATES: This regulation is effective April 11, 2024. Objections and requests for hearings must be received on or before June 10, 2024 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0321, is available at *https://www.regulations.gov.* Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. It may be of specific interest to persons who are an agricultural producer, food manufacturer, or pesticide manufacturer identified under North American Industrial Classification System (NAICS) codes 111, 112, 311, and 32532. The NAICS codes are provided to assist in determining interest. However, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What is the Agency's authority for taking this action?

EPA is taking this action pursuant to the authority in section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0321 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before June 10, 2024. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0321, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets#express.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Petition for Exemption

In the **Federal Register** of June 1, 2021 (86 FR 29229 (FRL–10023–95)), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11409) by Evonik Corporation, 299 Jefferson Road, Parsippany, NJ 07054. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of silane, hexadecyltrimethoxy-, hydrolysis products with silica (CAS Reg. No. 199876–45–4) when used as an inert ingredient (stabilizing emulsion) (Pickering emulsion) in pesticide formulations under 40 CFR 180.910 and 180.950 at no more than 0.6% by weight of the pesticide formulation (the petitioner has since withdrawn the portion of the petition requesting an exemption under 40 CFR 180.950). That document referenced a summary of the petition prepared by Evonik Corporation, 299 Jefferson Road, Parsippany, NJ 07054, the petitioner, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

FFDCA section 408(c)(2)(A)(i) allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' FFDCA section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. When making a safety determination for an exemption for the requirement of a tolerance FFDCA section 408(c)(2)(B) directs EPA to consider the considerations in FFDCA section 408(b)(2)(C) and (D). FFDCA section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' FFDCA section 408(b)(2)(D) lists other factors for EPA consideration making safety determinations, *e.g.,* the validity, completeness, and reliability of available data, nature of toxic effects, available information concerning the cumulative effects of the pesticide chemical and other substances with a

common mechanism of toxicity, and available information concerning aggregate exposure levels to the pesticide chemical and other related substances, among others.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(c)(2)(A), and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for silane, hexadecyltrimethoxy-, hydrolysis products with silica including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with silane, hexadecyltrimethoxy-, hydrolysis products with silica follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by silane, hexadecyltrimethoxy-, hydrolysis products with silica as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The toxicological database of silane, hexadecyltrimethoxy-, hydrolysis products with silica is supported by data regarding surrogate synthetic amorphous silica (SAS) compounds. EPA has determined that it is appropriate to bridge SAS data to assess silane, hexadecyltrimethoxy-, hydrolysis products with silica compounds due to similarities in structure and physico-chemical properties.

Silane, hexadecyltrimethoxy-, hydrolysis products with silica exhibits low levels of acute toxicity via the oral route of exposure. It is not a skin irritant or a skin sensitizer, and it is not irritating to the eyes. Silane, hexadecyltrimethoxy-, hydrolysis products with silica is anticipated to have low dermal and inhalation toxicity based on studies on surrogate chemicals.

The repeated-dose toxicity for silane, hexadecyltrimethoxy-, hydrolysis products with silica is low. No adverse effects were observed in a 90-day oral rat study or in a developmental toxicity study in rats up to the limit dose.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program*.

The available toxicity studies indicate that silane, hexadecyltrimethoxy-, hydrolysis products with silica has low overall toxicity following acute and repeated dosing. No adverse effects were reported in subchronic or developmental toxicity studies. Furthermore, concern for carcinogenicity is low, based on negative results in mutagenicity studies, and the lack of adverse effects in a chronic study with an SAS surrogate. Therefore, based on the low toxicity of silane, hexadecyltrimethoxy-, hydrolysis products with silica, no endpoint of concern was identified for oral, dermal or inhalation exposure assessments, and a quantitative risk assessment is not necessary.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to silane, hexadecyltrimethoxy-, hydrolysis products with silica, EPA considered exposure under the proposed exemption from the requirement of a tolerance. EPA assessed dietary exposures from silane, hexadecyltrimethoxy-, hydrolysis products with silica in food as follows:

Dietary exposure (food and drinking water) to silane, hexadecyltrimethoxy-, hydrolysis products with silica may occur following ingestion of foods with residues from their use in accordance with this exemption. However, a quantitative dietary exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Silane, hexadecyltrimethoxy-, hydrolysis products with silica may be present in pesticide and non-pesticide products that may be used in and around the home. However, a quantitative residential exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

3. *Cumulative effects from substances with a common mechanism of toxicity.* FFDCA section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Based on the lack of toxicity in the available database, EPA has not found silane, hexadecyltrimethoxy-,

hydrolysis products with silica to share a common mechanism of toxicity with any other substances, and silane, hexadecyltrimethoxy-, hydrolysis products with silica does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that silane, hexadecyltrimethoxy-, hydrolysis products with silica does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides*.

D. Additional Safety Factor for the Protection of Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on an assessment of silane, hexadecyltrimethoxy-, hydrolysis products with silica EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children. Because there are no threshold effects associated with silane, hexadecyltrimethoxy-, hydrolysis products with silica, EPA conducted a qualitative assessment. As part of that assessment, the Agency did not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to silane, hexadecyltrimethoxy-, hydrolysis products with silica residues.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of silane, hexadecyltrimethoxy-, hydrolysis products with silica (CAS Reg. No. 199876–45–4) in or on any food commodities. EPA is establishing a limitation on the amount of silane, hexadecyltrimethoxy-, hydrolysis products with silica that may be used in pesticide formulations applied pre-harvest. This limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that exceeds 0.6% silane, hexadecyltrimethoxy-, hydrolysis products with silica (CAS Reg. No. 199876–45–4) in the final pesticide formulation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of silane, hexadecyltrimethoxy-, hydrolysis products with silica (CAS Reg. No. 199876–45–4) when used as an inert ingredient (Pickering emulsion) in pesticide formulations applied to growing crops or raw agricultural commodities pre- and post-harvest under 40 CFR 180.910 at no more than 0.6% by weight of the pesticide formulation.

VII. Statutory and Executive Order Reviews

This action establishes exemptions from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act (CRA)

Pursuant to the CRA, 5 U.S.C. 801 *et seq.,* EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: March 29, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, amend Table 1 to 180.910 by adding, in alphabetical order, an entry for ''Silane, hexadecyltrimethoxy-, hydrolysis products with silica (CAS Reg. No. 199876–45–4)'' to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.910

Inert Ingredients	Limits	Uses
* * *	* *	* *
Silane, hexadecyltrimethoxy-, hydrolysis products with silica (CAS Reg. No. 199876–45–4).	No more than 0.6% by weight of the pesticide formulation.	Stabilizing emulsion (Pickering emulsion).
* * *	* *	* *

[FR Doc. 2024–07192 Filed 4–10–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PSHSB: PS Docket Nos. 21–346 and 15–80; ET Docket No. 04–35; FCC 24–5 FR ID 212327]

Resilient Networks; Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) adopts the *Second Report and Order* (Order) to advance the lines of inquiry particularly concerning the Network Outage Reporting System (NORS) and the Disaster Information Reporting System (DIRS).

DATES:

Effective date: This rule is effective April 11, 2024.

Compliance date: Compliance with 47 CFR 4.18 will not be required until the FCC has published a document in the **Federal Register** announcing the compliance date.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Logan Bennett, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–7790 or via email at *Logan.Bennett@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, Office of Managing Director Performance Evaluation and Records Management, 202–418–2991, or by email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order* (Order), in PS Docket Nos. 21–346 and 15–80; ET Docket No. 04–35; FCC 24–5, adopted on January 25, 2024, and released on January 26, 2024. The full text of this document is available by downloading the text from the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-24-5A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* Brialle, large print, electronic files, audio format, etc.) or to request reasonable accommodations, (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *FCC504@fcc.gov* or call the FCC's Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). When the FCC Headquarters reopens to the public, the full text of this document will also be available for public inspection and copying during regular business hours in the FCC Reference Center, 45 L Street NE, Washington, DC 20554.

Congressional Review Act: The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, OMB, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the *Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Paperwork Reduction Act: This document contains additional information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. (See FCC, *Resilient Networks Second Report and Order and Second Further Notice of Proposed Rulemaking, https://docs.fcc.gov/public/attachments/FCC-24-5A1.pdf* (Jan. 26, 2024) at 38, para. 86 and at 42, Appdx. B.)

Synopsis

The Commission initially adopted the DIRS system as a disaster response information tool in 2007, but we have not revisited the voluntary nature of the system in almost two decades even as the disaster and emergency landscape continues to change and technology continues to advance. By way of example, since DIRS was adopted on a voluntary basis, the Commission has adopted rules pursuant to the Warning, Alert and Response Network (WARN) Act to implement Wireless Emergency Alerts (WEAs), creating a valuable tool used by emergency response officials to leverage mobile communications networks to provide timely alerts to consumers in disaster situations.

As such, while a voluntary system like DIRS is beneficial, we believe in the current regulatory, technological and interconnected network environment it cannot work to its fullest potential unless we expand the aperture of who reports in the system, and enhance the fidelity of the data to allow for more effective decision making in response to disaster environments by requiring filings be made in emergency contexts. As the Commission evaluates the best approaches to support better outcomes for consumers in these challenging situations in the *Second Further Notice of Proposed Rulemaking* (*Second FNPRM*) (89 FR 22106, March 29, 2024), input from industry, public safety, public interest groups, as well as individuals who deal directly with these issues, will play a crucial role in determining how to effectively streamline disaster reporting while addressing individual entities' specific operational challenges.

The *2021 Resilient Networks Notice of Proposed Rulemaking (NPRM)* (86 FR 61103, Nov. 5, 2021) sought comment on three distinct topics: (i) enhancements to NORS and DIRS to improve situational awareness around disasters and outage events (which is the subject of the *Order*); (ii) improving implementation of the industry-developed Wireless Resiliency Cooperative Framework (which was addressed in the *2022 Report and Order* (87 FR 59329, Sept. 30, 2022) and *Further Notice of Proposed Rulemaking* (87 FR 59379, Sept. 30, 2022) with the Mandatory Disaster Response Initiative (MDRI)); and (iii) developing communications resilience strategies for power outages (*i.e.,* backup power). As detailed below, the *Order* adopts rules to:

- require cable communications, wireline, wireless, and interconnected Voice over internet Protocol (VoIP) providers (*i.e.,* ''subject providers'') to report their infrastructure status information in DIRS daily when the Commission activates DIRS in geographic areas in which they provide service, even when their reportable infrastructure status has not changed compared to the prior day The Commission has chosen to focus on cable communications, wireless, wireline, and VoIP providers (*i.e.,* ''subject providers'') in the *Order.* Broadcasters, broadband, satellite, and broadband internet access service (BIAS) providers expressed varying concerns and unique comments compared to those of the subject providers addressed herein which we believe are better addressed in a separate proceeding which will seek more narrow comments pertaining to those providers specifically as is previewed in the *Second FNPRM*];
- codify, in part 4 of the Commission's outage reporting rules, the current practice that a subject provider's NORS reporting obligations are waived while they report in DIRS [This exemption is codified as a revision to the Commission's part 4 rules stating that NORS reporting requirements do not apply when the Commission requires DIRS reporting. *See* 47 CFR 4.1 through 4.17]; and
- require that subject providers who report in DIRS provide a single, final DIRS report to the Commission, within 24 hours of the Commission's deactivation of DIRS, that provides the status of their infrastructure identified to the Commission during the DIRS reporting period that has not yet been fully restored at the time of the deactivation.

Second Report and Order

A. Mandating DIRS Reporting for Cable Communications, Wireless, Wireline, and Interconnected VoIP Providers

In the *2021 Resilient Networks NPRM,* the Commission proposed requiring cable, wireless, wireline, Direct Broadcast Satellite (DBS), Satellite Digital Audio Radio Service (SDARS), interconnected VoIP providers, and TV and radio broadcasters to report their infrastructure status information in DIRS when the Commission activates DIRS in geographic areas in which they provide service. In this respect, the Commission proposed to shift the reporting obligation from voluntary to mandatory for these providers and expand the categories of providers subject to DIRS reporting. In support of this proposal, the Commission noted that smaller providers often did not elect to voluntarily participate in DIRS reporting, reducing the Commission's situational awareness. The size of the provider a consumer uses should not affect a consumer's right to public safety and potentially life-saving information, nor should small rural communities be less entitled to functioning networks that provide alerts and 911 capability than communities served by large providers. The Commission also sought comment on ways to resolve ambiguity about whether a subject provider's lack of DIRS filings means that its network infrastructure remains fully operational or it is unable to file, and whether it cannot access DIRS due to disruption of its internet access or other exigencies. Based on the record, in the *Order,* the Commission requires DIRS reporting only as to cable communications wireline, wireless and interconnected VoIP providers, and provides that such reports must be filed on a daily basis until the Commission deactivates DIRS. We note that in some instances, and where warranted based on circumstances during extended activations, the Bureau has required reporting less frequently than daily. While we find daily reporting the best cadence norm, we delegate authority to PSHSB to amend the reporting schedule to a less frequent cadence where warranted. For instance, the Bureau may waive, sua sponte, the daily reporting time. In this regard, we also decline to provide more specificity as to the time daily reporting should occur as requested by NCTA—The internet and Television Association (NCTA), in that DIRS reporting may inform other time-sensitive disaster coordination activities across the Federal Government and that Commission staff must respond to those coordination activities by specifying reporting times in each DIRS activation Public Notice (PN) on a case-by-case basis. On days when a subject provider has no otherwise reportable changes in its infrastructure status, the report would take the form of a simplified ''check in'' report. In the *Second FNPRM,* we seek further comment to build a more robust record regarding the inclusion of satellite, broadband, and broadcast providers in a mandatory DIRS environment.

DIRS provides pertinent daily information that the Commission provides to a variety of public safety entities through information sharing, collaborative disaster response efforts, and to the public. The information in DIRS reports also enables the Bureau's Operations and Emergency Management Division (OEM) to manage its disaster response activities, such as visiting sites and validating communications restoration status, supporting vital search and rescue operations, and performing eyes-on assessments of disaster impacts and damages to prioritize and allocate response and recovery resources. At their core, DIRS reports, in combination with operational spectrum surveys and other direct engagement, serve as an impetus for open lines of communication between communications carriers and emergency management officials.

In response to the *2021 Resilient Networks NPRM,* several public interest and public safety-focused commenters opine that mandating DIRS reporting would increase the value of the situational awareness information that the Commission collects and will result in meaningful improvements to public safety. For example, Next Century Cities

(NCC) remarks that DIRS data from smaller-sized subject providers would allow the Commission to have a more granular look at how infrastructure and service has been disrupted on the ground, which would critically aid disaster response. Public Knowledge notes similarly that, in the current voluntary regime, the value of DIRS information is diminished as it is unclear if a non-reporting subject provider is unable to report due to severe damage or is simply electing not to file DIRS reports. Free Press states that more robust DIRS information will allow customers and impacted individuals to assess all communications options that may be available to them in the immediate aftermath of disaster and during a subsequent rebuilding phase; Public Knowledge further notes that having more DIRS information will allow the Commission to better hold providers accountable for failures.

Conversely, several parties representing industry, like ACA Connects—America's Communications Association (ACA), oppose mandating DIRS on grounds that it would be too burdensome or would only provide a limited benefit when it comes to requiring compliance from small providers. NTCA—The Rural Broadband Association (NTCA) believes that small operators will likely lack the personnel, time, or physical resources to make such reports in the midst of a disaster and states that DIRS reports may not actually be useful in disaster scenarios because the Department of Homeland Security's National Coordinating Center for Communications (DHS-NCC) and the Communications Information Sharing and Analysis Center (Comms-ISAC) provide a forum for industry stakeholders ''to share real-time information and collaborate with government partners on network restoration efforts [so] [a]ny new information sharing commitments would likely duplicate, and potentially conflict with, these established, well-defined processes, creating unnecessary burden and undermining rather than strengthening network resiliency.'' AT&T argues that, to manage burdens, mandatory reporting should be based on a ''best efforts'' standard and that there should be no penalty for failure to meet any deadlines established for particular events. NTCA also argues, ''it is currently unclear whether filing the [DIRS] reports lead to greater coordination between government and industry or offers a benefit to a company or community in crisis.''

We find that mandatory DIRS reporting will yield substantial public safety benefits. DIRS provides situational awareness of communications operational status and actionable information to public safety entities assisting in disaster response, thus promoting public safety. Additionally, the Commission's information sharing program provides direct read-only access to government agencies, providing a direct benefit to emergency response, and providing complete and accurate information to these sharing partners will provide actionable data to those making decisions in disaster and reliability contexts. DIRS exists ''to report communications infrastructure status and situational awareness information during times of crises'' and enables ''the Commission [to] disseminate DIRS information to other Federal agencies'' to ''facilitate Federal restoration efforts,'' as well as efforts from state, local, Tribal, and territorial governments, and get boots on the ground in the locations requiring urgent assistance. Public Knowledge asserts that ''[t]he FCC must require all wireless . . . providers to perform basic measures that reflect the lessons it has gleaned from recent post-disaster reports [as] [i]n these reports, the FCC has outlined straight-forward and obvious procedures that, if performed, would undoubtedly improve disaster responses.'' However, in its current voluntary state, DIRS provides the Commission with an incomplete picture of infrastructure status and other important emergency information and cannot reliably be used to determine whether entities are merely not reporting by choice or if they have lost the ability to report and are in need of aid and collaboration. Mandating DIRS reporting provides a more consistent picture of status during and after disasters and emergencies since there is a wider sampling of providers recording how an event has affected their infrastructure and capabilities. Requiring DIRS reporting will identify clearly for the Commission and other emergency response agencies of any possible issues and signals for needed aid and assistance and will make apparent when a provider does not or cannot report that there is an issue with their system or reporting capabilities. APCO International agrees that ''improving the information in these important systems will be helpful for situational awareness and ongoing efforts to improve network resiliency.'' Public Knowledge stresses the importance of ''better, timelier, and more detailed outage and service-quality reporting to ensure accountability [and] . . . needs to make this data available to the public in a way that balances the twin imperatives of transparency and information security.'' We agree that mandating reporting in DIRS will improve situational awareness through daily status updates during emergencies and serve the public interest by providing vital information regarding the operational status of communications networks the Commission and emergency response entities need to effectively manage communications needs during and after disasters occur.

Mandating DIRS is especially important in today's disaster climate as the quantity of disasters has increased since DIRS was first formulated. 2023 was recorded as the worst year on record for billion-dollar weather and climate disasters, passing the National Oceanic and Atmospheric Administration's (NOAA) prior record of 22 events in 2020 within the first eight months of 2023. DIRS data associated with an impacted area is of particular importance, since it provides a preliminary understanding of both the impact and scope of damages, enables the optimization of the allocation, prioritization, and deployment of response and restoration personnel and resources. Further, the analysis of DIRS data enables the identification of reliability trends and challenges associated with infrastructure in rural, underserved, and underprivileged communities. In addition, given the rise in the utilization of communications infrastructure by emergency response officials as a tool for alerting both through WEA and through more established Emergency Alert System (EAS) channels, as well as the advent of Next-Generation 911 and text-to-911, the need for relevant and comprehensive information related to the availability of the infrastructure for communication from and with the public provides added urgency for the reformation of our information collection efforts in the DIRS context in particular.

While commenters argue that reporting in this context is a burden particularly for small entities, we disagree with those who surmise that mandating participation in DIRS will be *unduly* burdensome for subject providers and that the benefits of such reporting and information garnered do not outweigh the detriments, especially in the matter of preserving life and public safety. For example, NCTA says that ''[w]hile outreach to customers during emergencies is vital, 'prescriptive requirements for specific modes of communication or unrealistic levels of precision and detail—as

proposed by some in the record—are impractical under emergency conditions and would divert limited resources away from maintenance and restoration of service.'' Commenters making such assertions opposing mandatory DIRS reporting, however, fail to adequately counter the benefits it will provide, and overlook the efficiencies associated with the proposal. While opposing commenters identify some burdens associated with filing in DIRS, they fail to take into account that providers would benefit from a simultaneous reduction of burdens due to the waiver of NORS filing requirements that we codify below. For instance, under NORS, a provider may have to file multiple reports for outages across a geographic area (even within counties for areas like cities and towns) dependent on the number of components involved. Under DIRS, while providers are filing daily, they are submitting DIRS reports for the entirety of the affected area. Further, the DIRS reporting content is less burdensome than NORS in terms of requirements. We agree with Free Press' observation that the Commission can also manage burdens as it has the authority to waive mandatory DIRS requirements on a case-by-case basis where appropriate, such as for extraordinary circumstances. In this respect, non-filing due to such circumstances will be examined on a case-by-case basis. In those instances where extraordinary circumstances prevent filing due to operational limitations, providers should: (1) use the Operations Center or otherwise notify the Commission if they are unable to file; and (2) make a filing as soon as they are capable, but no later than the final report due upon deactivation of DIRS, described below.

We also disagree with NTCA's contention that DIRS reports may not be useful because there are other avenues, including through the work of the DHS–NCC, for emergency managers and first responders to obtain real-time situational awareness information. NCTA's similar argument that mandating DIRS filings is not warranted because it does not result in active participation by stakeholders at the state and local level is also unpersuasive. First, the systematic, mandatory collection of information in DIRS would not overlap with other Federal, state, local, Tribal, and territorial government efforts, and this non-duplicative information would be made available in real-time to both DHS and other participating public safety entities pursuant to the Commission's information sharing rules to further enhance their efforts (The mandated collection of information associated with DIRS would be non-duplicative and lacking in overlap with state, local, Tribal, and territorial governments as the information they receive comes from the Department of Homeland Security (DHS) and its Emergency Support Function #2 (ESF–2) and/or its state public utility system. Local response officials would be lacking this information unless a state or local entity has a relationship with a specific carrier, which is not common.). Such information could also be available to local entities through permitted downstream sharing (The Commission's rules allow Participating Agencies to share NORS and DIRS information with first responders, emergency communications centers, and other local government agencies who play a vital public safety role during crises and have a need to know this information (Downstream Agencies).), and is shared with the public on an aggregated basis via communications status reports published daily by the Commission when DIRS is activated, providing valuable public information on available avenues for communications during emergencies. Additionally, mandating reporting in DIRS for all subject providers would ensure full participation of service providers in each affected area and therefore present the Commission and other entities with a comprehensive insight as to infrastructure status and reporting capabilities of such entities through regular updates. The contentions of NTCA and NCTA are contradicted by a significant factual record identified in the *2021 Resilient Networks NPRM* and in the Commission's Disaster Communications Fall 2021 Field Hearing. As Public Knowledge underscores, the importance of information regarding the status of communications networks during and after disasters, especially in providing real-time updates and emergency alerts to the public as well as to emergency response personnel, is critical, particularly as it provides more geographically and infrastructure-specific information to those affected by outages.

We also reject the assertions of ACA Connects and NTCA that the burden for small providers with limited resources is too substantial to justify mandatory reporting, particularly in the midst of the need to effectuate repairs. Small providers, including many recipients of Universal Service Funds (USF), are often a crucial link for alerting and 911 in rural and underserved communities. The lack of visibility into the operational status of these networks when disaster response officials are performing vital tasks like determining how to effectuate outreach to communities that may involve evacuation instructions, shelter in place, or other emergency directives does a significant disservice to these populations, and may place them at increased risk. While timely restoration is crucially important, the minimal time and burden associated with notifying the Commission of infrastructure status is necessary to ensure timely emergency response activity. Moreover, we clarify that submissions made in DIRS under the rule adopted in the *Order* shall be based on information known by the provider at the time. We further recognize that in circumstances where DIRS is activated subject providers are necessarily operating in a disaster environment, and that submissions must be provided with a reasonable basis for believing the information therein is accurate. In those instances where extraordinary circumstances prevent filing due to operational limitations, providers should: (1) use the FCC Operations Center or otherwise notify the Commission if they are unable to file; and (2) make a filing as soon as they are capable, but no later than the final report due upon deactivation of DIRS, described herein.

It has been sixteen years since the Commission launched DIRS, and the time is ripe to take steps to improve the efficacy of the system. While the National Association of Broadcasters (NAB) argues that nothing has changed since the Commission's 2007 determination that a voluntary process for DIRS reporting proved adaptable to the unique circumstances of various crises, we disagree. The state of natural disasters, frequencies of emergencies, and the emergence of advanced technology has changed remarkably over the last almost two decades. The evolution of alerting through the advent of WEA, the associated implementation of FEMA's Integrated Public Alert and Warning System (IPAWS) gateway for the dissemination of WEAs and EAS alerts, as well as the launch of the Commission's own information sharing program for NORS and DIRS have altered the regulatory landscape as well. NAB's position similarly fails to consider the results of a Government Accountability Office (GAO) report noting a sharp increase in the number of wireless outages attributed to a physical incidents, and its recommendation that the Commission improve its monitoring of industry

efforts to strengthen wireless network resilience, as well as the Commission's own previous determinations, as a result of inquiries and investigations of the infrastructure status and capabilities of providers during and after disasters, that there is a need for a more comprehensive monitoring of situational awareness information. Like the recently adopted Mandatory Disaster Response Initiative (MDRI), DIRS is another valuable tool that can aid the Commission in its resiliency and restoration efforts. While the MDRI focuses on improving the resiliency and reliability of mobile wireless networks before, during, and after emergencies, DIRS provides the means to identify where the reparation, replacement, and restoration of communications infrastructure is vital.

DIRS also provides important information regarding which and how many Public Safety Answering Points (PSAPs) are unable to receive incoming emergency information from consumers in need. In regard to PSAPs, while NORS and DIRS serve similar purposes (reporting network outages), they collect different types of data. PSAP impact data is specifically collected by DIRS and not NORS. Once DIRS is activated, the Commission gets more fidelity as to PSAP status that it would not ordinarily get if only NORS were utilized, as no PSAP-specific information is collected in NORS at all. DIRS further provides information such as how many cell sites have been affected, where damaged power infrastructure is impacting communications, and other status information. Rather than waiting for the next emergency—be it natural or man-made—to strike and remind us, again, of the importance of comprehensive situational awareness to ensure the public safety and expedite the restoration of communications, we are relying on our experience and the record before us to adopt mandatory DIRS requirements now.

In considering the scope of reporting entities, we limit our determination at this time to cable communications, wireless, wireline, and interconnected VoIP providers. In this respect, we find that the record supports adoption of mandatory DIRS reporting for these providers because this group of providers should already have information like points of contact, roaming agreements, coordination and response plans, and restoration plans of action in place due to the general course of business. This was echoed in the record by Public Knowledge. Wireless providers especially should already have these ideals for resiliency and restoration in place given the 2016 Wireless Network Resiliency Cooperative Framework that has recently been mandated as the MDRI, which requires wireless providers to establish and share with the Commission (upon request) elements like roaming arrangements and mutual aid agreements. However, we note the concerns raised by satellite (DBS and SDARS) and broadcast (television and radio) providers seeking to differentiate their services in terms of impact to their specific technology in disaster contexts, operational restrictions, and the types of information that is likely relevant for disaster response relative to these particular services that may impact the specific data needs to be collected from these entities. For example, certain types of technology, like satellite, may have limited terrestrial components impacted by a disaster such that a more nuanced approach for outage reporting may be appropriate. In this respect, we also note that these services, while crucial to distribute information during disasters, may not serve the same function as the other services for which we require DIRS reporting today—namely, the use by consumers to seek help by communicating with emergency responders and loved ones. The Satellite Industry Association (SIA) requests more detail regarding proposals for mandatory DIRS reporting for that sector, and NAB raises arguments about the burdens of reporting, especially for smaller broadcasters who experience disruptions in the services they provide as well as underlying telephone, internet, or power services on which broadcasters rely to provide service. Further, these emergencies and ''disasters often lead to power outages and the loss of telephone and internet access, making it difficult if not impossible for smaller stations without a corporate support infrastructure to file a DIRS report.'' To build a more complete record about the impact of our proposals on the satellite and broadcast sectors, we seek further comment pertaining to satellite and broadcast, as well as broadband, providers whose comments share different concerns and views than the subject providers included under the *Order,* in the *Second FNPRM.*

By mandating DIRS reporting for subject providers, we expect that there will be an increase in both the volume and clarity of situational awareness information collected, and the Commission will be able to share this information with Federal, state, Tribal, and territorial partners. Additional DIRS information will be helpful during disaster events and can help improve public safety planning and response efforts. DIRS provides decision-making public safety officials and emergency managers with an invaluable tool for assessing where communications services and infrastructure are impacted by disasters, as well as insights into the speed and scope of communications restoration. Particularly, DIRS information is a key performance indicator and serves as a primary input to the FEMA Lifelines report and Senior Leaders Interagency Briefings, which enables decision makers to concentrate their personnel and resources on areas presumed to have been impacted the hardest. Requiring this information to be reported by subject providers will assist with general situational awareness, the deployment of disaster and recovery logistics, and applications of infrastructure grants and insurance claims.

Confidentiality. Several commenters raise concerns regarding the protection of information that entities would be providing in DIRS on a mandatory basis. For instance, NCTA urges the Commission to maintain its presumption of confidentiality for DIRS information submitted by subject providers, while the California Public Utilities Commission (CPUC) alternatively argues that ''it is critical for people to acquire as much information about outages, disasters, and service restoration efforts before relocating to another, presumably safer location.'' Public Knowledge similarly argues that public disclosure of outage information would enhance market incentives to provide more reliable service. While we shift from voluntary to mandatory reporting, we find no compelling reason at this time to alter the existing presumption of confidentiality for any reporting information received merely by virtue of this change, and decline to amend that presumption here. The Commission acknowledges that the CPUC filed a Petition for Reconsideration in regard to information sharing. The determination here discussing confidentiality and the treatment of information is not a pre-judgment of the Petition in that context. Particularly in the DIRS context, we note that public disclosures are already made on an aggregated basis, providing a level of transparency to consumers to effectuate the primary purpose of DIRS—the collection and dissemination of disaster-specific outage impact information. While driving the market to more reliability is an important goal, we do not find that disclosure in this context is appropriate at this time.

B. Codifying the NORS Reporting Waiver When DIRS Is Activated

In the *2021 Resilient Networks NPRM,* the Commission sought comment on whether to codify the Commission's typical practice of granting subject providers a waiver of their NORS reporting requirements when they report in DIRS. Under the Commission's current voluntary DIRS reporting approach, the Bureau typically waives NORS reporting obligations for subject providers who elect to report in DIRS for the duration of its activation period. This decision is announced through the release by the Commission of a formal notice on an activation-by-activation basis. The Bureau has routinely issued this sua sponte waiver when DIRS has been activated and has found success with this approach. In the *Order,* we adopt this proposal and give it effect by revising the Commission's part 4 rules to suspend all NORS reporting obligations pertaining to outages that arise when DIRS reporting is activated and outages are timely reported in DIRS. 47 CFR part 4. More specifically, the Commission will waive NORS filings that would be due while DIRS is activated. Further, and as discussed more below in the following sections, once an outage has been filed under DIRS per the *Order,* a provider need not file the same outage in NORS.

USTelecom—The Broadband Association (USTelecom), NCTA, and AT&T support this proposal expressly, and no commenters oppose it. Accordingly, we conclude that formally codifying this practice would give providers more clarity on their obligations and both streamline and formalize existing practices with no detrimental impact on the Commission's current public safety efforts. Because of the long and successful practice of granting waivers, the Bureau and the industry should easily transition to this permanent solution. Moreover, the codification of this practice will be beneficial for subject providers as this waiver will reduce burdens for DIRS filers during emergency conditions when the system is activated. As proposed, this shift between reporting mechanisms also mitigates the burden of potentially duplicative reporting for subject providers by only requiring reporting in one system during and after disasters instead of a dual requirement. This will also provide administrative efficiency by eliminating the need for the Bureau to determine and issue waivers on an activation-by-activation basis.

C. Final DIRS Reports Upon Deactivation

In the *2021 Resilient Networks NPRM,* the Commission sought comment on how to maintain situational awareness as to the status of providers' services when a provider has not yet fully restored its service at the time that the Commission deactivates DIRS. The *2021 Resilient Networks NPRM* asked whether providers with ongoing outages at the time of DIRS being deactivated should be required to report those outages in NORS; the Commission proposed resolving this issue by requiring that subject providers with ongoing outages at the time of DIRS deactivation provide a final report that describes their current infrastructure status at the time the system was deactivated to be submitted within 24 hours of deactivation. This would allow the Commission to see what remains unresolved immediately following deactivation of DIRS, and provide to the Commission an estimate of when the subject provider believes the issue(s) can be resolved. We adopt that proposal here; the final report shall be provided as input to a free form text field in the current DIRS interface, where a subject provider will be able to describe in detail the identity and status of outstanding infrastructure equipment and issues and the estimated dates by which these issues shall be resolved.

Under the Commission's current rules, there may be instances in which DIRS is deactivated but some providers have not yet fully restored service. In these instances, the Commission no longer has situational awareness as to the status of those subject providers' services because updates are no longer being filed in DIRS and the outage would have never been filed in NORS (as the Commission typically suspends NORS reporting obligations for subject providers who elect to report in DIRS, and we adopt that practice in the *Order*). This has resulted in an information gap where the Commission loses situational awareness of subject providers' status in restoring services after DIRS is deactivated. No commenter directly addresses whether providers with ongoing outages at the time of DIRS deactivation should be required to report those outages in NORS, but AT&T opines that any such report should be provided in DIRS rather than NORS.

We find that a final deactivation report, filed in DIRS within 24 hours of the Commission deactivating DIRS, will close a significant gap that currently occurs at the conclusion of the DIRS reporting period, and therefore adopt such a reporting requirement. Bridging this informational divide will also enable Commission staff to conduct follow-up inquiries on an as-needed basis based on the information gathered, increase provider accountability, and provide needed opportunities for analysis associated with recovery. While this minor additional filing to close out issues presented though the course of a DIRS activation is only a minimal burden, we find the minor burden outweighed by the anticipated benefits and efficiencies associated with more directed staff engagement with incident resolution. We also find that this close-out report obviates the need for any additional filings in NORS as related to the same outage and clarify that once an outage is filed in DIRS, the event need not be filed in NORS.

We also agree with AT&T that it would be most effective for providers to supply a final report in DIRS since the report relates to a provider's previous filings in DIRS. Moreover, filing such reports in DIRS will promote efficiency and reduce confusion, both for those who file reports and for those who review them. This would include subject providers, participating entities who take part in the Commission's NORS and DIRS information sharing program, and Commission staff. Final reports will promote clarity by continuing to associate such reports with the initiating incident in the same system.

While the *2021 Resilient Networks NPRM* did not posit a specific implementation for the reporting format, and no commenter proposed a specific implementation, we clarify here that the report should be completed by filling in a free form text field in DIRS where a subject provider shall provide, in a text field, a short summary of the identity and status of its outstanding infrastructure equipment and estimated dates by which any and all issues will be resolved. This format will allow maximum flexibility for subject providers to include effective descriptions to the Commission given the wide range of issue types and related circumstances that may occur in the aftermath of DIRS activation. We require, however, that a part of that free form input include estimated resolution dates, which will both create accountability on the part of providers and allow the Commission staff to promptly and effectively follow-up with the providers as necessary.

D. Cost-Benefit Analysis

In the *2021 Resilient Networks NPRM,* the Commission generally sought information on the costs and benefits specific to promoting situational

awareness during disasters, noting that ''a proposed requirement to file in DIRS must be balanced against additional burdens on providers, particularly as DIRS reports are filed in the midst of disasters and other emergencies.'' The Commission asked commenters to explore the costs and benefits associated with mandatory reporting, but the record was lacking in response to this request. However, ACA Connects states that the Commission ''should not adopt any requirements to participate in DIRS without undertaking a cost-benefit analysis that addresses such questions when it comes to considering mandatory reporting for smaller providers.''

We are cognizant of the fact that, as a general matter, it is impossible to assign precise dollar values to the improvement in public safety, life and health resulting from changes to the DIRS reporting requirements. Nevertheless, we believe that these proposals will result in benefits in terms of lives saved and injuries and property damages prevented. Expanded reporting will improve situational awareness of outages during disasters and aid in emergency response and recovery coordination. Improved information on outages makes communications options clearer for the individual responding in disasters. Improved data on outages can also help the government hold providers accountable for failures to timely respond to outages. Data collected can help with future disasters through improved planning for support and mitigation strategies. According to NOAA, natural disasters have caused annually in excess of $118 billion in economic damages and 564 deaths for the last 10 years. We believe that the mandatory DIRS filing obligation will result in a reduction of these harms to a degree that results in a significant social and public safety benefit.

In considering the costs associated with a mandatory DIRS filing obligation, we expect that subject providers will enter emergency contact information and critical information as necessary (*i.e.,* related to infrastructure damage and restoration) in DIRS. Responses, and DIRS reports generally, will differ and appear unique for each emergency or disaster due to differing events, geographic areas (*e.g.,* a network covers several affected counties and submits one DIRS report for each county), and varieties of service provided. We estimate that the average cost of the mandatory DIRS reporting for cable communications, wireless, wireline, and interconnected VoIP providers is less than $1.6 million per year. We do not account for the cost arising from assessing the network availability during DIRS activations because, as part of normal business operations, service providers would have made these assessments without the reporting requirement when a disaster strikes. As a result, the assessment cost is not considered separately in the cost estimate. The cost estimate of $1.6 million is likely an overestimate because it includes service providers that are currently voluntarily participating and already incurring the reporting costs without the changes in rules for mandated subject providers.

While it would be impossible to quantify the precise financial value of these health and safety benefits, we believe that the value of these benefits will significantly outweigh the annual cost of $1.6 million. In light of the record reflecting large benefits to communications providers, agencies, and other industry stakeholders, we find that the total incremental costs imposed on the nation's subject providers by these new requirements will be minimal in many instances and, even when significant, will be far outweighed by the nationwide benefits. While DIRS provides vital information pertaining to infrastructure status, it can only be beneficial if as many providers as possible participate in reporting. This level of participation has yet to be achieved in a voluntary reporting state, causing the need to transition to mandatory reporting.

E. Timelines for Compliance

We set a single date for compliance by all subject providers for implementing these rules at the later of 30 days after the FCC publishes notice in the **Federal Register** that the OMB has completed its review of Paperwork Reduction Act requirements, November 30, 2024. The Commission has selected November 30, 2024, as the effective date for mandated DIRS reporting to go into effect as this gives subject providers a number of months to comply and ensures that mandated DIRS reporting is in place for the entirety of the 2025 hurricane season (based on the 2023 current hurricane season that runs from June 1, 2023, to November 30, 2023). We anticipate that by November 2024 new filers will have sufficient time to prepare for filing and the Commission will be able to make any changes required in the DIRS system. This date will also provide reasonable assurance that any necessary transitions do not occur during the height of hurricane season, which typically ends by late November.

We also find that subject providers will require only a modest amount of time to adjust their processes to comply with these rules because, as noted above, many subject providers already voluntarily report in DIRS or have similar reporting or recording practices for disasters in place. We believe that the compliance timing provided grants sufficient time for subject providers, including small entities, to implement any changes to their reporting methods and work with Bureau staff to resolve any concerns about the DIRS reporting process.

Once the compliance date has been established, we will require that cable communications, wireless, wireline, and interconnected VoIP subject providers report their infrastructure status information in DIRS whenever the Commission activates DIRS in geographic areas where such entities provide service. To resolve previous ambiguity as to whether a subject provider was failing to report because (1) its network infrastructure remained fully operational; (2) the entity was unable to file; or (3) the entity cannot access DIRS due to disruption of its internet access or other exigencies, the Commission requires entities to file reports on a daily basis until the Commission has deactivated DIRS. In this respect, non-filing due to such circumstances will be examined on a case-by-case basis. In those instances where extraordinary circumstances prevent filing due to operational limitations, providers should: (1) use the Operations Center or otherwise notify the Commission if they are unable to file; and (2) make a filing as soon as they are capable, but no later than the final report due upon deactivation of DIRS.

List of Subjects in 47 CFR Part 4

Communications equipment, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 4 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 47 U.S.C. 34–39, 151, 154, 155, 157, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

■ 2. Add § 4.18 to read as follows:

§ 4.18 Mandatory Disaster Information Reporting System (DIRS) reporting for Cable Communications, Wireless, Wireline, and VoIP providers.

(a) Cable Communications, Wireline, Wireless, and Interconnected VoIP providers shall be required to report their infrastructure status information each day in the Disaster Information Reporting System (DIRS) when the Commission activates DIRS in geographic areas in which they provide service, even when their reportable infrastructure has not changed compared to the prior day. Cable Communications, Wireless, Wireline and Interconnected VoIP providers are subject to mandated reporting in DIRS and shall:

(1) Provide daily reports on their infrastructure status from the start of DIRS activation until DIRS has been deactivated.

(2) Provide a single, final report to the Commission within 24 hours of the Commission's deactivation of DIRS and the termination of required daily reporting, detailing the state of their infrastructure at the time of DIRS deactivation and an estimated date of resolution of any remaining outages.

(b) Cable Communications, Wireline, Wireless, and Interconnected VoIP providers who provide a DIRS report pursuant to paragraph (a) of this section are not required to make submissions in the Network Outage Reporting System (NORS) under this chapter pertaining to any incidents arising during the DIRS activation and that are timely reported in DIRS. Subject providers shall be notified that DIRS is activated and deactivated pursuant to Public Notice from the Commission and/or the Public Safety and Homeland Security Bureau.

(c) This section may contain information collection and/or recordkeeping requirements. Compliance with this section will not be required until this paragraph (c) is removed or contains compliance dates.

[FR Doc. 2024–07402 Filed 4–10–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 89, No. 71
Thursday, April 11, 2024

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1223

[Doc. No. AMS–SC–23–0078]

Pecan Promotion, Research, and Information Order: Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification of referendum.

SUMMARY: Notice is hereby given of a referendum to be conducted among eligible producers and importers of pecans to determine whether they favor continuance of the Agricultural Marketing Service's (AMS) regulations regarding a national pecan research and promotion program.

DATES: This referendum will be conducted by mail and electronic ballot from May 10, 2024, through June 10, 2024. Ballots delivered to AMS via mail or electronic ballot must show proof of delivery by no later than 11:59 p.m. Eastern Time on June 10, 2024, to be counted.

ADDRESSES: Copies of the Pecan Promotion, Research, and Information Order may be obtained from: Referendum Agents, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244, Telephone: (202) 720–8085 or contact Matthew Collins at (972) 210–9109 or via Email: *MatthewB.Collins@usda.gov,* or Katie Cook at (202) 617–4760 or via Email: *Katie.Cook@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Matthew Collins, Marketing Specialist, Market Development Division, SCP, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244, Matthew Collins (972) 210–9109 or via Email: *MatthewB.Collins@usda.gov* or Katie Cook, Marketing Specialist, Market Development Division, SCP, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244, Katie Cook (202) 617–4760 or via Email: *Katie.Cook@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425) (Act), it is hereby directed that a referendum be conducted to ascertain whether continuance of the Pecan Promotion, Research, and Information Order (Order) (7 CFR part 1223) is favored by eligible producers and importers of pecans covered under the program. The Order is authorized under the Act. The Order is administered by the American Pecan Promotion Board (Board) with oversight by the U.S. Department of Agriculture (USDA).

The representative period for establishing voter eligibility for the referendum shall be the period from October 1, 2022, through September 30, 2023. Persons who are producers or importers who have produced or imported 50,000 pounds of inshell pecans (25,000 pounds of shelled pecans) during the representative period are eligible to vote in the referendum. Persons who received an exemption from assessments pursuant to § 1223.53 for the entire representative period are ineligible to vote. AMS will provide the option for electronic balloting. The referendum will be conducted by mail and electronic ballot from May 10 through June 10, 2024. Further details will be provided in the ballot instructions.

Section 518 of the Act (7 U.S.C. 7417) authorizes required referenda. Under § 1223.71(a)(1) of the Order, the USDA must conduct a referendum not later than three years after assessments first begin. The program became effective on February 12, 2021, with the collection of assessments, as required by §§ 1223.52 and 1223.53, and compliance with reporting and recordkeeping requirements under §§ 1223.60 and 1223.61, beginning on October 1, 2021. USDA would continue the Order, if continuance is favored by a majority of producers and importers voting in the referendum, and who, during the representative time period engaged in the production or importation of pecans.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the referendum ballot has been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0328. It is estimated that approximately 725 entities will be eligible to vote in the referendum. It will take an average of 15 minutes for each voter to read the voting instructions and complete the referendum ballot.

Referendum Order

Matthew Collins, Marketing Specialist; Katie Cook, Marketing Specialist; and Alexandra Caryl, Branch Chief, Market Development Division, SCP, AMS, USDA, Stop 0244, Room 1406–S, 1400 Independence Avenue SW, Washington, DC 20250–0244, are designated as the referendum agents to conduct this referendum. The referendum procedures at 7 CFR 1223.100 through 1223.107, which were issued pursuant to the Act, shall be used to conduct the referendum.

The referendum agents will mail or provide electronically the ballots to be cast in the referendum and voting instructions to all known, eligible producers and importers prior to the first day of the voting period. Any eligible producers or importers who do not receive a ballot should contact a referendum agent no later than three days before the end of the voting period. Ballots delivered via mail or electronic ballot must show proof of delivery by no later than 11:59 p.m. Eastern Time on June 10, 2024, to be counted.

List of Subjects in 7 CFR Part 1223

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Pecan promotion, Nuts, Reporting and recordkeeping requirements.

(Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401)

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–07725 Filed 4–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–900N]

Schedules of Controlled Substances: Placement of Butonitazene, Flunitazene, and Metodesnitazene Substances in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes placing butonitazene, flunitazene, and metodesnitazene including their isomers, esters, ethers, salts and salts of isomers, esters and ethers in schedule I of the Controlled Substances Act. If finalized, this action would make permanent the existing regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess), or propose to handle these three specific controlled substances.

DATES: Comments must be submitted electronically or postmarked on or before May 13, 2024.

Interested persons may file a request for a hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.47 and/or 1316.49, as applicable. Requests for a hearing, and waivers of an opportunity for a hearing or to participate in a hearing, must be received on or before May 13, 2024.

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). The electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period. To ensure proper handling of comments, please reference ''Docket No. DEA–900N'' on all electronic and written correspondence, including any attachments.

• *Electronic comments:* The Drug Enforcement Administration (DEA) encourages commenters to submit all comments electronically through the Federal eRulemaking Portal which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

• *Paper comments:* Paper comments that duplicate electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

• *Hearing requests:* All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be filed with the DEA Administrator, who will make the determination of whether a hearing will be needed to address such matters of fact and law in the rulemaking. Such requests must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. For informational purposes, a courtesy copy of requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

• *Paperwork Reduction Act Comments:* All comments concerning collections of information under the Paperwork Reduction Act must be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for DOJ, Washington, DC 20503. Please state that your comment refers to Docket No. DEA–900N.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: In this proposed rule, the Drug Enforcement Administration (DEA) proposes to permanently schedule the following three controlled substances in schedule I of the Controlled Substances Act (CSA), including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

• butonitazene (2-(2-(4-butoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine),

• flunitazene (*N,N*-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine),

• metodesnitazene (*N,N*-diethyl-2-(2-(4-methoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine).

Posting of Public Comments

All comments received in response to this docket are considered part of the public record. DEA will make comments available for public inspection online at *https://www.regulations.gov,* unless reasonable cause is given. Such information includes personal or business identifiers (such as name, address, state of federal identifiers, etc.) voluntarily submitted by the commenter.

Commenters submitting comments which include personal identifying information (PII), confidential, or proprietary business information that the commenter does not want made publicly available should submit two copies of the comment. One copy must be marked ''CONTAINS CONFIDENTIAL INFORMATION'' and should clearly identify all PII or business information the commenter does not want to be made publicly available, including any supplemental materials. DEA will review this copy, including the claimed PII and confidential business information, in its consideration of comments. The second copy should be marked ''TO BE PUBLICLY POSTED'' and must have all claimed confidential PII and business information already redacted. DEA will post only the redacted comment on *https://www.regulations.gov* for public inspection. DEA generally will not redact additional information contained in the comment marked ''TO BE PUBLICLY POSTED.'' The Freedom of Information Act applies to all comments received.

For easy reference, an electronic copy of this document and supplemental information to this proposed scheduling action are available at *https://www.regulations.gov.*

Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking ''on the

record after opportunity for a hearing.'' Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559.[1] Interested persons, as defined in 21 CFR 1300.01(b), may file requests for a hearing in conformity with the requirements of 21 CFR 1308.44(a) and 1316.47(a), and such requests must:

(1) state with particularity the interest of the person in the proceeding;

(2) state with particularity the objections or issues concerning which the person desires to be heard; and

(3) state briefly the position of the person with regarding to the objections or issues.

Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(c), together with a written statement of position on the matters of fact and law involved in any hearing.[2]

All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law involved in such hearing, must be sent to DEA using the address information provided above. The decision whether a hearing will be needed to address such matters of fact and law in the rulemaking will be made by the Administrator. If a hearing is needed, DEA will publish a notice of hearing on the proposed rulemaking in the **Federal Register**.[3] Further, once the Administrator determines a hearing is needed to address such matters of fact and law in rulemaking, she will then designate an Administrative Law Judge (ALJ) to preside over the hearing. The ALJ's functions shall commence upon designation, as provided in 21 CFR 1316.52.

In accordance with 21 U.S.C. 811 and 812, the purpose of a hearing would be to determine whether butonitazene, flunitazene, and metodesnitazene meet the statutory criteria for placement in schedule I, as proposed in this rule.

Legal Authority

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of Health and Human Services (HHS), or on the petition of any interested party.[4] This proposed action is supported by a recommendation from the Assistant Secretary for Health of HHS (Assistant Secretary for HHS or Assistant Secretary) and an evaluation of all other relevant data by DEA. If finalized, this action would make permanent the existing temporary regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles or proposes to handle these three substances.

Background

On April 12, 2022, pursuant to 21 U.S.C. 811(h)(1), DEA published an order in the **Federal Register** temporarily placing butonitazene, flunitazene, metodesnitazene, and four additional benzimidazole-opioids in schedule I of the Controlled Substances Act (CSA) based upon a finding that these substances pose an imminent hazard to the public safety.[5] That temporary order was effective upon the date of publication. Under 21 U.S.C. 811(h)(2), the temporary scheduling of a substance expires at the end of two years from the date of issuance of the scheduling order, except that DEA may extend temporary scheduling of that substance for up to one year during the pendency of permanent scheduling proceedings under 21 U.S.C. 811(a)(1) with respect to the substance. Pursuant to 21 U.S.C. 811(h)(2), the temporary scheduling of butonitazene, flunitazene, and metodesnitazene expires on April 12, 2024, unless extended. An extension of the temporary order is being ordered by the DEA Administrator in a separate action, published elsewhere in this issue of the **Federal Register**.

As described in the temporary order published on April 12, 2022, butonitazene, flunitazene, and metodesnitazene belong to the class of substances known as benzimidazole-opioids and are synthetic opioids. The Assistant Secretary for HHS has advised DEA that there are no exemptions or approvals in effect for butonitazene, flunitazene, and metodesnitazene under section 505 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 335. According to HHS, and also by DEA's findings in this proposed rule, butonitazene, flunitazene, and metodesnitazene have no known accepted medical use. These substances are not the subject of any approved new drug application (NDA) or investigational new drug application (IND), and are not currently marketed as approved drug products.

The Administrator, on her own motion pursuant to 21 U.S.C. 811(a), is initiating proceedings to permanently schedule butonitazene, flunitazene, and metodesnitazene. DEA gathered the necessary data and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse for these substances. On July 13, 2022, in accordance with 21 U.S.C. 811(b), the Administrator then submitted a request to the Assistant Secretary to provide DEA with a scientific and medical evaluation of available information and a scheduling recommendation for six benzimidazole substances.

On November 15, 2023, the Assistant Secretary submitted HHS's scientific and medical evaluation and scheduling recommendation for butonitazene, flunitazene, metodesnitazene, and three other benzimidazole-opioids and their salts to the Administrator,[6] which recommended placing butonitazene, flunitazene, and metodesnitazene and their salts in schedule I of the CSA. In accordance with 21 U.S.C. 811(c), upon receipt of the scientific and medical evaluation and scheduling recommendation from HHS, DEA reviewed the documents and all other relevant data, and conducted its own eight-factor analysis of the abuse potential of these three substances.

Proposed Determination to Permanently Schedule Butonitazene, Flunitazene, and Metodesnitazene

As discussed in the background section, the Administrator is initiating proceedings, pursuant to 21 U.S.C. 811(a), to permanently add butonitazene, flunitazene, and metodesnitazene to schedule I. DEA reviewed the scientific and medical evaluation and scheduling recommendation received from HHS, and all other relevant data, and it conducted its own eight-factor analysis of the abuse potential of these three

[1] 21 CFR 1308.41 through 1308.45; 21 CFR part 1316, subpart D.

[2] 21 CFR 1316.49.

[3] 21 CFR 1308.44(b), 1316.53.

[4] 21 U.S.C. 811(a).

[5] *See* Schedules of Controlled Substances: Temporary Placement of Butonitazene, Etodesnitazene, Flunitazene, Metodesnitazene, Metonitazene, *N*-Pyrrolidino etonitazene, and Protonitazene in Schedule I, 87 FR 21556 (Apr. 12, 2022). The four additional benzimidazole-opioids were etodesnitazene, metonitazene, *N*-pyrrolidino etonitazene, and protonitazene. DEA pursued separate scheduling actions for metonitazene, *see* 88 FR 56466 (Aug. 18, 2023) and for etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene, to remain as a schedule I substances under the CSA in order to meet the United States' obligations under the United Nations Single Convention on Narcotic Drugs, Mar. 30, 1961, 18 U.S.T. 1407, 520 U.N.T.S. 151 (Single Convention), as amended by the 1972 Protocol.

[6] The three other benzimidazole-opioids (etodesnitazene, *N*-pyrrolidino etonitazene, and protonitazene) will not be discussed further in this proposed rule.

substances pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in its proposed scheduling action. Please note that both the DEA and HHS analyses are available in their entirety under ''Supporting Documents'' of the public docket for this proposed rule at *https://www.regulations.gov* under Docket Number ''DEA–900N.''

1. The Drug's Actual or Relative Potential for Abuse

In addition to considering the information HHS provided in its scientific and medical evaluation document for butonitazene, flunitazene, and metodesnitazene, DEA also considered all other relevant data regarding actual or relative potential for abuse of these three substances. The term ''abuse'' is not defined in the CSA; however, the legislative history of the CSA suggests that DEA consider the following criteria when determining whether a particular drug or substance has a potential for abuse: [7]

a. There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or

b. There is a significant diversion of the drug or substance from legitimate drug channels; or

c. Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

d. The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.

Both DEA and HHS eight-factor analyses found that butonitazene, flunitazene, and metodesnitazene have pharmacological profiles similar to those of the synthetic opioids etonitazene and isotonitazene, which are both schedule I controlled substances and have high potential for abuse. According to HHS, butonitazene, flunitazene, and metodesnitazene have no approved medical uses in the United States, and they have been encountered on the illicit drug market with adverse outcomes on the public health and safety. Because there are no Food and Drug Administration (FDA)-approved or FDA-exempted products for butonitazene, flunitazene, and metodesnitazene in the United States or in any other country, a practitioner may not legally prescribe them, and they cannot be dispensed to an individual. However, these benzimidazole-opioids substances are available for purchase from legitimate chemical companies because they can be used in scientific research. There is no known diversion from research activities for these substances.

Because butonitazene, flunitazene, and metodesnitazene are not formulated or available for clinical use as approved medicinal products, it is inferred that all current use of these substances by individuals are based on their own initiative, rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs. According to drug seizure data from 2020 and 2023 from the National Forensic Laboratory Information System (NFLIS-Drug) [8] database, which collects drug identification results from drug cases submitted to and analyzed by Federal, State, and local forensic laboratories, there have been a total of 130 reports for butonitazene, flunitazene, or metodesnitazene. Evidence from law enforcement seizures [9] indicate that individuals are taking these benzimidazole-opioids with no accepted medical use, on their own initiative rather than on the medical advice of a licensed practitioner. Individuals may be using these benzimidazole-opioids on their own initiative because of their opioidergic effects similar to other schedule I or II opioid substances. Consequently, law enforcement encounters of butonitazene, flunitazene, and metodesnitazene demonstrate that these substances are being abused, and thus pose safety hazards to the health of users or the community.

2. Scientific Evidence of the Drug's Pharmacological Effects, if Known

According to DEA and HHS, the pharmacological activity of butonitazene, flunitazene, and metodesnitazene in humans is unknown. Preclinical studies show that these benzimidazole-opioids exhibit a pharmacological profile similar to that of morphine and fentanyl. As explained in detail in both DEA and HHS eight-factor analyses, data from binding studies show that these substances, similar to morphine and fentanyl, selectively bound to mu-opioid receptors.[10] In opioid receptor functional assays, butonitazene, flunitazene, and metodesnitazene, similar to fentanyl and morphine, acted as mu-opioid receptor agonists.[11] Further, data from preclinical studies using rodents showed that butonitazene, flunitazene, and metodesnitazene, similar to morphine and fentanyl, produced analgesic effects that can be attenuated by an opioid antagonist pretreatment.[12] [13] HHS concluded that, similar to morphine and fentanyl, butonitazene, flunitazene, and metodesnitazene produced analgesic effects via activation of mu-opioid receptors.

Additionally, behavioral effects of butonitazene, flunitazene, and metodesnitazene were assessed using the drug discrimination model. Drug discrimination studies can be used to determine whether a test drug produces pharmacological effects (*i.e.,* interoceptive stimulus effects) similar to those produced by a known drug of abuse. Drugs that produce stimulus effects similar to known drugs of abuse in animals are also likely to be abused by humans. As explained in detail in both DEA and HHS eight-factor analyses, data from drug discrimination

[7] Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91–1444, 91st Cong., Sess. 1 (1970); reprinted in 1970 U.S.C.C.A.N. 4566, 4603.

[8] NFLIS-Drug represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a comprehensive information system that includes data from forensic laboratories that handle the nation's drug analysis cases. NFLIS-Drug participation rate, defined as the percentage of the national drug caseload represented by laboratories that have joined NFLIS, is currently 98.5 percent. NFLIS includes drug chemistry results from completed analyses only. NFLIS-Drug data was queried on November 21, 2023.

[9] While law enforcement data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV, 76 FR 77330, 77332 (Dec. 12, 2011).

[10] DEA–VA Interagency Agreement. ''In Vitro Receptor and Transporter Assays for Abuse Liability Testing for the DEA by the VA''. Binding and Functional Activity at Delta, Kappa and Mu Opioid Receptors. 2020. Unpublished data.

[11] DEA–VA Interagency Agreement. ''In Vitro Receptor and Transporter Assays for Abuse Liability Testing for the DEA by the VA''. Binding and Functional Activity at Delta, Kappa and Mu Opioid Receptors. 2021. Unpublished data.

[12] Gatch MB. Evaluation of Abuse Potential of Synthetic Opioids Using in Vivo Pharmacological Studies. Test of analgesic effects alone and in combination with naltrexone. Unpublished Data. 2022.

[13] Paronis C. Evaluation of Synthetic Opioid Substances using Analgesia and Drug Discrimination Assays. Test of antinociceptive effects. Unpublished Data. 2021a.

studies demonstrate that butonitazene,[14] flunitazene,[15] and metodesnitazene [16] have stimulus properties that are similar to both morphine and fentanyl, schedule II drugs. Taken together, data from preclinical studies demonstrate that butonitazene, flunitazene, and metodesnitazene share similarities in their pharmacological effects and mechanism of action to the schedule II opioid drugs morphine and fentanyl.

3. The State of Current Scientific Knowledge Regarding the Drug or Other Substance

Butonitazene, flunitazene, and metodesnitazene belong to the 2-benzylbenzimidazole structural class. The chemical structures of these 2-benzylbenzimidazoles contain a benzimidazole ring and a benzyl group at the benzimidazole 2-position. These benzimidazole-opioids are structurally related to several schedule I substances, including etonitazene. There are no FDA-approved marketing applications for drug products containing butonitazene, flunitazene, and metodesnitazene for any therapeutic indication in the United States or medical use in any other country. Further, there are no well-controlled clinical studies that have demonstrated the safety or efficacy for these substances. According to HHS, FDA concluded that butonitazene, flunitazene, and metodesnitazene have no currently accepted medical use in the United States. Similarly, DEA concludes that butonitazene, flunitazene, and metodesnitazene have no currently accepted medical use according to established DEA procedure and case law.

4. Its History and Current Pattern of Abuse

In the late 1950s, the Swiss chemical company CIBA Aktiengesellschaft synthesized a group of benzimidazole derivatives with analgesic properties; [17] however, the research did not lead to any medically approved analgesic products. These benzimidazole derivatives include schedule I substances, such as the synthetic opioids clonitazene, etonitazene, and isotonitazene. In 2019, isotonitazene emerged on the illicit drug market and was involved in numerous fatal overdose events; in August 2020, it was temporarily controlled as a schedule I substance under the CSA.[18] Subsequently, additional six benzimidazole-opioids emerged on the illicit opioid drug market. In April 2022, DEA temporarily controlled these six benzimidazole-opioids as schedule I substances due, in part, to their involvement in numerous postmortem and toxicology cases.[19] Law enforcement agencies have encountered butonitazene, flunitazene, and metodesnitazene in several solid (*e.g.,* powder, rock, and tablet) forms. These substances are not approved for medical use anywhere in the world.

According to HHS, there are no FDA-approved drug products for butonitazene, flunitazene, and metodesnitazene in the United States.[20] The appearance of these benzimidazole-opioids on the illicit drug market is similar to other synthetic opioids that are trafficked for their psychoactive effects. These three benzimidazole-opioid substances are likely to be abused in the same manner as schedule I opioids, such as etonitazene, isotonitazene, and heroin. These substances have been identified as powders or tablets, typically of unknown purity or concentration. Between 2020 and 2021, butonitazene, flunitazene, and metodesnitazene emerged on the illicit synthetic drug market as evidenced by their identification in forensic drug seizures and in biological samples. Based on NFLIS-Drug data, law enforcement encounters of butonitazene, flunitazene, and metodesnitazene often included mixtures. Substances found in combination with some of these benzimidazole-opioids include other substances of abuse, such as heroin, fentanyl, fentanyl analogues, designer benzodiazepines, and cocaine.

5. The Scope, Duration, and Significance of Abuse

Butonitazene, flunitazene, and metodesnitazene, similar to schedule I substances, such as etonitazene and isotonitazene, are synthetic opioids, and evidence suggests they are abused for their opioidergic effects. The abuse of these benzimidazole-opioids, similar to other synthetic opioids, has resulted in their identification in toxicology, post-mortem cases, and law enforcement encounters. Data from the toxicology analysis showed that butonitazene has been positively identified in three postmortem cases, flunitazene in four post mortem cases,[21] and metodesnitazene in one case.[22]

Data from law enforcement suggest that butonitazene, flunitazene, and metodesnitazene are being abused in the United States as recreational drugs. The law enforcement encounters of these benzimidazole-opioids, as reported to NFLIS-Drug, included 130 exhibits since 2020. NFLIS-Drug registered 66 encounters of butonitazene from 7 states, 60 encounters of flunitazene from 11 states, and 4 encounters of metodesnitazene from 3 states. Of the 66 reports involving butonitazene, fentanyl was co-identified in 24 cases. Flunitazene was commonly co-identified with metonitazene (n = 30) in fifty percent of the cases. Metodesnitazene was co-reported with diphenhydramine (n = 2), fentanyl (n = 2), and heroin (n = 2).

The identification of these benzimidazole-opioids in forensic and toxicology cases suggests they may be presented as a substitute for heroin or fentanyl and likely abused in the same manner as either of those substances. The population likely to be harmed by these benzimidazole-opioids appears to be the same as that harmed by other opioid substances, such as heroin, tramadol, fentanyl, and other synthetic opioid substances. This is evidenced by the types of other drugs co-identified in biological samples and law enforcement encounters. Law enforcement and toxicology reports demonstrate that butonitazene, flunitazene, and metodesnitazene are being abused, and that their use can produce serious adverse events that can lead to death. Because users of butonitazene, flunitazene, and metodesnitazene are likely to obtain these substances through unregulated sources, the identity, purity, and quantity of these substances are uncertain and likely to be inconsistent, thus posing significant adverse health risks to the end user. Individuals who initiate use of one or more of these benzimidazole-opioids are likely to be at risk of developing a substance use disorder, fatal or non-fatal

[14] Gatch, M. Butonitazene: Test of substitution for the discriminative stimulus effects of morphine (15DDHQ21F00000340, 2021. Unpublished Data).

[15] Paronis, C. Flunitazene: Test of morphine-like discriminative stimulus effects (15DDHQ20P00000709, 2021b. Unpublished Data).

[16] Paronis, C. Metodesnitazene: Test of morphine-like discriminative stimulus effects (15DDHQ20P00000709, 2021c. Unpublished Data).

[17] Hunger, A., Kebrle, J., Rossi, A., & Hoffmann, K. [Synthesis of analgesically active benzimidazole derivatives with basic substitutions]. Experientia, 1957 Oct 15;13(10), 400–401.

[18] 85 FR 51342 (Aug. 20, 2020).

[19] 87 FR 21556 (Apr. 12, 2022).

[20] Department of Health and Human Services. Basis for the Recommendation to Control Butonitazene, Etodesnitazene, Flunitazene, Metodesnitazene, N-Pyrrolidino Etonitazene, and Protonitazene and Their Salts in Schedule I of the Controlled Substances Act (November 2023).

[21] Walton SE, Krotulski AJ, Logan BK. A Forward-Thinking Approach to Addressing the New Synthetic Opioid 2-Benzylbenzimidazole Nitazene Analogs by Liquid Chromatography—Tandem Quadrupole Mass Spectrometry (LC–QQQ–MS). J Anal Toxicol. 2022 Mar 21;46(3):221–231.

[22] Metodesnitazene_092221_ToxicologyAnalyticalReport.pdf (*cfsre.org*).

overdose, similar to that of other opioid analgesics (*e.g.,* fentanyl, morphine, etc.).

6. What, if Any, Risk There Is to the Public Health

The increase in opioid overdose deaths in the United States has been exacerbated recently by the availability of potent synthetic opioids on the illicit drug market. It is well established that substances that act as mu-opioid receptor agonists have a high potential for abuse and addiction and can induce dose-dependent respiratory depression. As with any mu-opioid receptor agonist, the potential health and safety risks for users of butonitazene, flunitazene, and metodesnitazene are high. Consistently, these three benzimidazole-opioids have been positively identified in toxicology cases. The public health risks associated with the abuse of mu-opioid receptor agonists are well established.

The introduction of synthetic opioids, such as butonitazene, flunitazene, and metodesnitazene, into the illicit drug market may serve as a portal to problematic opioid use for those seeking these opioids. Evidence from toxicology reports show that poly-substance abuse remains common in fatalities associated with the abuse of some of these benzimidazole-opioids.

7. Its Psychic or Physiological Dependence Liability

Butonitazene, flunitazene, and metodesnitazene have pharmacological effects similar to those of schedule I benzimidazole-opioids such as clonitazene, etonitazene, and isotonitazene. According to HHS, analgesic studies conducted on these benzimidazole-opioids show that they produce effects similar to that of either morphine or fentanyl, both schedule II narcotic drugs. Although there are no clinical studies that have evaluated the dependence potential of these substances, they are mu-opioid receptor agonists, and it is well known that the discontinuation of the use of mu-opioid receptor agonists, such as fentanyl and morphine, causes withdrawal symptoms indicative of physical dependence. The similarities in the pharmacological profile and pattern of abuse of these benzimidazole-opioids, heroin, and fentanyl are indicative of their similar potential to have psychic and physiological dependence liability.

8. Whether the Substance Is an Immediate Precursor of a Substance Already Controlled Under the CSA

Butonitazene, flunitazene, and metodesnitazene are not immediate precursors of a substance controlled under the CSA, as defined by 21 U.S.C. 802(23).

Conclusion:

After considering the scientific and medical evaluation and accompanying scheduling recommendation of HHS, and DEA's own eight-factor analysis, DEA finds that these facts and all relevant data constitute substantial evidence of potential for abuse of butonitazene, flunitazene, and metodesnitazene. As such, DEA proposes to permanently schedule these three benzimidazole-opioids as schedule I controlled substances under the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule.[23] After consideration of the analysis and recommendation of the Assistant Secretary for HHS and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

(1) Butonitazene, flunitazene, and metodesnitazene have a high potential for abuse. Butonitazene, flunitazene, and metodesnitazene, similar to etonitazene and fentanyl, are mu-opioid receptor agonists. These three benzimidazole-opioids have analgesic effects and these effects are mediated by mu-opioid receptor agonism. HHS states that substances that produce mu-opioid receptor agonist effects in the central nervous system are considered as having a high potential for abuse (*e.g.* morphine and fentanyl). Data obtained from drug discrimination studies indicate that butonitazene, flunitazene, and metodesnitazene fully substituted for the discriminative stimulus effects of morphine.

(2) Butonitazene, flunitazene, and metodesnitazene have no currently accepted medical use in the United States. There are no FDA-approved drug products for butonitazene, flunitazene, and metodesnitazene in the United States. There are no known therapeutic applications for these benzimidazole-opioids and DEA is not aware of any currently accepted medical uses for these substances in the United States.[24]

(3) There is a lack of accepted safety for use of butonitazene, flunitazene, and metodesnitazene under medical supervision. Because these substances have no FDA-approved medical use and have not been investigated as new drugs, their safety for use under medical supervision is not determined.

Based on these findings, the Administrator of DEA concludes that butonitazene, flunitazene, and metodesnitazene, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, warrant continued control in schedule I of the CSA.[25]

Requirements for Handling Butonitazene, Flunitazene, and Metodesnitazene

As discussed above, these three substances are currently subject to a temporary scheduling order, which added them to schedule I. If this rule is finalized as proposed, butonitazene, flunitazene, and metodesnitazene would be subject, on a permanent basis, to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule I substances, including the following:

1. Registration. Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) butonitazene, flunitazene, and metodesnitazene must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. *Security.* Butonitazene, flunitazene, and metodesnitazene are subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and 871(b), and in accordance with 21 CFR 1301.71 through 1301.76. Non-practitioners

[23] 21 U.S.C. 812(b).

[24] HHS and DEA both applied a five-part test for currently accepted medical use as part of this scheduling action. Under that test, with respect to a drug that has not been approved by the Food and Drug Administration, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. The drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. Marijuana Scheduling Petition; Denial of Petition; Remand, 57 FR 10499 (Mar. 26, 1992), *pet. for rev. denied, Alliance for Cannabis Therapeutics* v. *Drug Enforcement Admin.,* 15 F.3d 1131, 1135 (D.C. Cir. 1994).

[25] 21 U.S.C. 812(b)(1).

handling these three substances also must comply with the screening requirements of 21 CFR 1301.90 through 1301.93.

3. Labeling and Packaging. All labels and labeling for commercial containers of butonitazene, flunitazene, and metodesnitazene must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

4. Quota. Only registered manufacturers are permitted to manufacture butonitazene, flunitazene, and metodesnitazene in accordance with a quota assigned pursuant to 21 U.S.C. 826, and in accordance with 21 CFR part 1303.

5. Inventory. Any person registered with DEA to handle butonitazene, flunitazene, and metodesnitazene must have an initial inventory of all stocks of controlled substances (including these substances) on hand on the date the registrant first engages in the handling of controlled substances pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including butonitazene, flunitazene, and metodesnitazene) on hand every two years pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. Records and Reports. Every DEA registrant must maintain records and submit reports with respect to butonitazene, flunitazene, and metodesnitazene, pursuant to 21 U.S.C. 827, 832(a), and 958(e), and in accordance with 21 CFR 1301.74(b) and (c) and 1301.76(b) and 21 CFR parts 1304, 1312, and 1317. Manufacturers and distributors would be required to submit reports regarding butonitazene, flunitazene, and metodesnitazene to the Automation of Reports and Consolidated Order System pursuant to 21 U.S.C. 827, and in accordance with 21 CFR parts 1304 and 1312.

7. Order Forms. Every DEA registrant who distributes butonitazene, flunitazene, and metodesnitazene must comply with the order form requirements, pursuant to 21 U.S.C. 828 and 21 CFR part 1305.

8. Importation and Exportation. All importation and exportation of butonitazene, flunitazene, and metodesnitazene must comply with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

9. Liability. Any activity involving butonitazene, flunitazene, and metodesnitazene not authorized by, or in violation of, the CSA or its implementing regulations is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14094 (Modernizing Regulatory Review)

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures done ''on the record after opportunity for a hearing,'' which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563. E.O. 14094 modernizes the regulatory review process to advance policies that promote the public interest and address national priorities.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does not have substantial direct effects on the states, on the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of E.O. 13175. It does not 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.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–612, has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

On April 12, 2022, DEA published an order to temporarily place seven benzimidazole-opioids in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). DEA estimates that all entities handling or planning to handle butonitazene, flunitazene, and metodesnitazene have already established and implemented systems and processes required to handle these substances.

There are currently 45 registrations authorized to specifically handle butonitazene, flunitazene, or metodesnitazene, as well as 1,239 registered analytical labs and 861 researchers that are authorized to handle schedule I controlled substances generally. These 45 registrations represent 31 entities. A review of the 45 registrations indicates that all entities that currently handle butonitazene, flunitazene, and metodesnitazene also handle other schedule I controlled substances and have established and implemented (or maintained) systems and processes required to handle these substances. Therefore, DEA anticipates this proposed rule will impose minimal or no economic impact on any affected entities; and thus, will not have a significant economic impact on any affected small entity. Therefore, DEA has concluded that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.,* DEA has determined and certifies that this action would not result in any Federal mandate that may result ''in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year. . . .'' Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This proposed rule would not impose a new collection or modify an existing collection of information under the Paperwork Reduction Act of 1995.[26] Also, this proposed rule would not impose new or modify existing recordkeeping or reporting requirements on state or local governments,

[26] 44 U.S.C. 3501–3521.

individuals, businesses, or organizations. However, this proposed rule would require compliance with the following existing OMB collections: 1117–0003, 1117–0004, 1117–0006, 1117–0008, 1117–0009, 1117–0010, 1117–0012, 1117–0014, 1117–0021, 1117–0023, 1117–0029, and 1117–0056. 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.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 5, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Scott Brinks,

Federal Register Liaison Officer, Drug Enforcement Administration.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11:

■ a. Redesignate paragraphs (b)(62) through (107) as paragraphs (b)(66) through (110);

■ b. Redesignate paragraphs (b)(44) through (62) as paragraphs (b)(46) through (64);

■ c. Redesignate paragraphs (b)(24) through (43) as paragraphs (b)(25) through (44);

■ d. Add new paragraphs (b)(24), (45), and (65); and

■ e. Remove and reserve paragraphs (h)(50), (52), and (53).

The additions to read as follows:

§ 1308.11 Schedule I.

* * * * *

(b) * * *

* * * * * * *	
(24) Butonitazene (2-(2-(4-butoxybenzyl)-5-nitro-1*H*-benzimidazol-1-yl)-*N,N*-diethylethan-1-amine)	9751
* * * * * * *	
(45) Flunitazene (*N,N*-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1*H*-benzimidazol-1-yl)ethan-1-amine)	9756
* * * * * * *	
(65) Metodesnitazene (*N,N*-diethyl-2-(2-(4-methoxybenzyl)-1*H*-benzimidazol-1-yl)ethan-1-amine)	9764

* * * * *

[FR Doc. 2024–07694 Filed 4–10–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100908–23]

RIN 1545–BQ62

Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–100908–23) published in the **Federal Register** on August 30, 2023, containing proposed regulations regarding increased credit or deduction amounts available for taxpayers satisfying prevailing wage and registered apprenticeship (collectively, PWA) requirements established by the Inflation Reduction Act of 2022 (IRA).

DATES: Written or electronic comments were to be received by October 30, 2023.

ADDRESSES: Commenters were strongly encouraged to submit public comments electronically.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number); concerning submissions of comments or the public hearing, Vivian Hayes, (202) 317–6901 (not toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–100908–23) that is the subject of this correction is under sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48C, 48E, and 179D of the Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–100980–23) contains an error that needs to be corrected.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–100908–23) that is the subject of FR Doc. 2023–18514, published on August 30, 2023, is corrected on page 60018, in the first column, by correcting the fifth line of the heading to read ''1545–BQ62''.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–07723 Filed 4–10–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–117631–23]

RIN 1545–BQ97

Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On December 26, 2023, the Department of the Treasury (Treasury Department) and the IRS issued a notice of proposed rulemaking (NPRM) relating to the credit for production of clean hydrogen and the election to treat clean hydrogen production facilities as energy property, as established and amended by the Inflation Reduction Act of 2022, respectively. The NPRM referred to the collection of information associated with the process for taxpayers to request an emissions value from the Department of Energy (DOE) to petition the Secretary of the Treasury or her delegate (Secretary) for a provisional emissions rate (PER). This document invites comments on the information collection related to that process.

DATES: Written comments must be received by May 13, 2024.

ADDRESSES: Written comments to OIRA for the proposed information collection should be submitted within 30 days of this document's publication at *https://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.

A copy of the information collection request is available through the docket on the internet at *https://www.regulations.gov.*

In addition to the submission of comments to *https://www.reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the DOE at *45VemissionsRequest@ee.doe.gov,* with the subject line ''SNPRM Comment''.

FOR FURTHER INFORMATION CONTACT: For questions concerning this document, the Office of Chief Counsel (Passthroughs and Special Industries) at (202) 317–6853 (not a toll-free number). For questions concerning the submission of comments regarding the emissions value request process, Karen Dandridge at (202) 586–3388 or by email (preferred) at *45VemissionsRequest@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 13204 of Public Law 117–169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added new sections 45V and 48(a)(15) of the Internal Revenue Code (Code) to provide a credit for the production of, and investment in, clean hydrogen. On December 26, 2023, the Treasury Department and the IRS published in the **Federal Register** proposed regulations to amend the Income Tax Regulations (26 CFR part 1) under sections 45V and 48(a)(15). 88 FR 89220.

The NPRM references the DOE's process for applicants to request an emissions value from the DOE that could then be used to file a petition with the Secretary for determination of a PER as detailed in proposed § 1.45V–4. The petition to the Secretary will be made by attaching a copy of the letter from the DOE stating the emissions value to Form 7210, *Clean Hydrogen Production Credit* or Form 3468, *Investment Credit.*[1] This document contains supplemental information relating to the PER petition process for applicants that request an emissions value from the DOE and invites comments on the DOE's emissions value request process.

The public comment period for the NPRM closed on February 26, 2024, and a public hearing was held on March 24, 25, and 26, 2024. The public comments received are being considered. This document opens a 30-day period for comments on the DOE's emissions value request process. Comments received in response to this document must pertain to that process. Comments outside the scope of this document will not be considered.

Explanation of Provisions

This document supplements the guidance provided in the NPRM to specify the DOE's emissions value request process.

[1] The PER petition filed with the Secretary is performed by attaching the emissions value obtained from the DOE to the filing of Form 7210 or Form 3468. The burden is included within the Forms 7210 and 3468 and their respective instructions. Forms 7210 and 3468 are, and will be, approved by OMB, in accordance with 5 CFR 1320.10, under the following OMB Control Numbers: 1545–0074 for individual filers, 1545–0123 for business filers, 1545–0047 for tax-exempt organization filers, and 1545–NEW for trust and estate filers of Form 7210 and 1545–0155 for trust and estate filers of Form 3468.

I. DOE Emissions Value Request Process

The Treasury Department and the IRS proposed that, to obtain an emissions value from the DOE based on the DOE's analytical assessment of the lifecycle greenhouse gas (GHG) emissions associated with a hydrogen production facility's production pathway, in addition to meeting the requirements set forth in the NPRM, an applicant must first complete a front-end engineering and design (FEED) study or similar indicia of project maturity, as determined by the DOE, and then request an emissions value from the DOE. The term ''emissions value'' means the DOE's analytical assessment of the lifecycle GHG emissions rate of a hydrogen production facility's hydrogen production process.[2]

A. FEED Study

The NPRM provided that applicants may only request an emissions value after having completed a FEED study or similar indicia of project maturity, as determined by the DOE, such as project specification and cost estimate sufficient to inform a final investment decision. The DOE has determined that, at this time, a FEED study completed based on an Association for Advanced Cost Engineering Class 3 Cost Estimate is necessary to sufficiently indicate commercial project maturity for robust emissions analysis. The Treasury Department and the IRS continue to seek comments on whether alternative appropriate pathways to demonstrating project readiness exist. Comments received in response to the NPRM and this document will be considered and these requirements may be revised accordingly.

B. Emissions Value Request Application

In order to request an emissions value from the DOE for a given hydrogen facility, applicants must submit the following information to the DOE: (1) specific sections of the FEED study, as described in the DOE's emissions value request process instructions (Instructions); and (2) a completed Emissions Value Request Form, as described in the Instructions. Additionally, the Emissions Value Request Application may contain any additional information that may be beneficial to the DOE in completing a lifecycle GHG analysis of the hydrogen production pathway for which the applicant is requesting an emissions value. Such additional information would be optional, and the applicant's

[2] DOE's evaluation of lifecycle greenhouse gas emissions corresponds with how the term is defined in 26 U.S.C. 45V(c)(1).

Emissions Value Request Application would be considered complete regardless of whether any additional information is provided.

In order to file an Emissions Value Request Application, applicants would first be required to send an email to the DOE at *45VemissionsRequest@ee.doe.gov,* stating their intent to submit an Emissions Value Request Application and the name of the applicant's organization. The DOE would then send the applicant an email with a link to a secure folder to which the applicant would upload the Emissions Value Request Application.

Additional information about the emissions value request process will be available at: *https://www.reginfo.gov.*

II. Request for Comments

Comments are requested on the DOE's Emissions Value Request Application process, including (1) whether additional procedures should be implemented to effectuate the Emissions Value Request Application process; (2) information to be collected and whether additional information should be considered by the DOE in evaluating an Emissions Value Request Application; and (3) any other aspects of the emissions value request process.

Once approved by the Office of Management and Budget (OMB) under the DOE OMB Control Number 1910–NEW, notice will be given in the **Federal Register** that the emissions value request process is open.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) generally requires that a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information described in this document would include reporting and third-party disclosure requirements. This collection is necessary for certain hydrogen producers to obtain an emissions value which they may use to claim the section 45V credit, or the section 48 credit with respect to a specified clean hydrogen production facility. This information would generally be used by the DOE to assist applicants in obtaining their emissions values and may be provided to the IRS for tax compliance purposes.

This document addresses a collection of information related to submitting an Emissions Value Request Application and supporting documentation to the DOE to enable the DOE to provide an analytical assessment of the lifecycle GHG emissions of the applicant's facility's hydrogen production process. Prior to the opening of the emissions value request process, the DOE will publish on its website Instructions for submitting an Emissions Value Request Application and other application material at the following URL: *https://www.energy.gov/eere/emissions-value-request-process.*[3]

The Emissions Value Request Application will require that applicants provide specific sections of a FEED Study based on an AACE Class 3 Cost Estimate and other detailed hydrogen production and emissions information as described in this document. The information submitted with Emissions Value Request Applications would allow the DOE to prepare its analytical assessments of the hydrogen production pathways for which applicants are requesting emissions values, which are necessary for hydrogen producers whose hydrogen production pathways are not included in the 45VH2–GREET model[4] to petition the Secretary for a PER and which support DOE in updating the 45VH2–GREET model to include new hydrogen production pathways.[5] To assist with the collection of information, the DOE will provide administration services for the emissions value request process. Among other things, the DOE will utilize Kiteworks file sharing system to receive and review Emissions Value Request Applications and to provide Response Letters to applicants. The DOE may provide information received or developed by the DOE to the IRS. These collection requirements will be submitted to OMB under 1910–NEW for review and approval in accordance with 5 CFR 1320.11. The likely respondents are businesses, individuals, and tax-exempt organizations.

A summary of paperwork burden estimates for the emissions value request process is as follows:

Estimated number of respondents: 100.

Estimated burden per response: 40.

Estimated frequency of response: 1.

Estimated total burden hours: 4,000.

Comments are requested on the collection requirements for the DOE's Emissions Value Request Application process. Written comments for the proposed information collection should be submitted through *https://www.reginfo.gov/public/do/PRAMain.* Comments must contain the OMB Control Number of the information collection request. They must also contain the docket number of the request, [REG–117631–23]. Find this particular information collection by selecting ''*Currently under Review—Open for Public Comments*'' then by using the search function. Comments on the collection of information should be received by May 13, 2024. Comments are specifically requested concerning:

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the DOE, including whether the information will have practical utility.

2. The accuracy of the estimated burden associated with the proposed collection of information.

3. How the quality, utility, and clarity of the information to be collected may be enhanced.

4. How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

5. Estimates of capital costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Once approved by OMB under the DOE OMB Control Number 1910–NEW, notice will be given in the **Federal Register** that the emissions value request process is open.

[3] This link will not be live until the emissions value request process is available.

[4] *Available at: https://www.energy.gov/eere/greet.*

[5] 26 U.S.C. 45V(c)(1). Other examples of Federal lifecycle greenhouse gas emissions analysis include: DOE's *Interagency Statement announcing modifications to GREET to assess Sustainable Aviation Fuel lifecycle GHG emissions* (available at: *https://www.energy.gov/articles/interagency-statement-agencies-participating-sustainable-aviation-fuels-lifecycle-analysis*), and the Environmental Protection Agency's Model Comparison Technical Document, EPA–420–R–23–017 (available at: *https://www.epa.gov/renewable-fuel-standard-program/final-renewable-fuels-standards-rule-2023-2024-and-2025*). Additionally, updating the 45VH2–GREET model with new hydrogen production pathways will reduce the burden on hydrogen producers by allowing them to rely on 45VH2–GREET instead of submitting Emissions Value Request Applications to the DOE.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedures Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. See the NPRM for the initial regulatory flexibility analysis.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This document does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This document does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Drafting Information

The principal author of this document is the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department, the DOE, and the IRS participated in the development of the document.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2024–07644 Filed 4–10–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0205]

RIN 1625–AA11

Regulated Navigation Area; Port of Miami, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of inquiry.

SUMMARY: The Coast Guard is seeking information and comments on a potential regulated navigation area for certain waters surrounding the Port of Miami. The current proposal in consideration would establish a slow speed zone throughout Fisherman's Channel and the Main Ship Channel for vessels less than 150 meters in length. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 13, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0205 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 about this notice or study, call or email Mr. David Lieberman, Seventh Coast Guard District (dpw), U.S. Coast Guard; telephone (571) 608–3465, email *David.L.Lieberman2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NOI Notice of Inquiry
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Captain of the Port (COTP) Miami has determined there has been an increase in navigational risk in certain waterways in proximity to the Port of Miami as the port continues to expand and vessel traffic increases. On May 10th and 11th of 2023, Coast Guard Navigation Center (NAVCEN) and Sector Miami held a Ports and Waterways Safety Assessment (PAWSA) with key local stakeholders. As a result, the workshop identified hazards associated to the port, with the largest concern for navigational safety being the high speed of vessels and wake created by increased vessel traffic. The Coast Guard has received reports of an increasing number of incidents as vessel traffic has increased.

On June 25, 2023, around 3:30 a.m. a recreational vessel traveling at a high rate of speed through the Main ship channel collided with a vehicle ferry. This incident resulted in the loss of life as well as impact to the movement of passenger and cargo vessels in the Port of Miami over a 12-hour period. Additionally, on February 12, 2024, a recreational vessel collied with an inspected passenger vessel in Fisherman's Channel. This incident resulted in 13 injuries. With the creation of a regulated navigation area the Coast Guard intends to reduce the navigational risk associated with high-speed vessel operations in a densely trafficked waterway.

In addition to these incidents, the Port of Miami is expanding its cruise ship terminals and expects vessel and passenger throughput increases over the next several years. This increase in passenger service, accompanied by an increase in Liquified Natural Gas (LNG) bunkering operations in the port introduce a new set of operational risks in the area.

These risks, in combination with the criticality of this port to the local and regional economy, form the basis for evaluation of additional measures to enhance navigation safety. The establishment of a regulated navigation area is expected to promote improvements to vessel traffic management, reduce high speed operations and enhance navigation safety. The current proposal in consideration would establish a slow speed restriction on vessels less than 150 meters within the Port of Miami.

III. Information Requested

To aid us in further developing a proposed rule, we seek responses from waterway users to the following questions:

(1) Do you currently transit through Fisherman's Channel or the Main Channel in Biscayne Bay?

(2) How often do you transit this waterway?

(3) Is there a specific part of either channel that you find to be dangerous to navigate in?

(4) Has your vessel or other property ever been damaged as a result of vessel operations in this area?

(5) Is there a specific speed limitation you think would help reduce the risk of transiting through this area?

(6) Is there a specific part of either channel you think should require a reduced speed?

(7) Is there a specific part of either channel you think should not require a reduced speed?

(8) What challenges have you experienced when transiting this area due to increased vessel traffic?

(9) How would a speed restriction impact your ability to safety operate your vessel?

(10) Do you think other measures would be more appropriate than a speed restriction? If so, what measures would you propose?

(11) Are there any other factors you think the Coast Guard should consider before moving forward with this rulemaking?

IV. Public Participation and Request for Comments

We encourage you to submit comments in response to this NOI through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0205 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. In your submission, please include the docket number for this notice of inquiry and provide a reason for each suggestion or recommendation. 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.

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 may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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 in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

We may hold a public meeting, if necessary, to receive oral comments on this Notice of Inquiry and will announce the date, time, and location in a separate document published in the **Federal Register**. If you signed up for docket email alerts mentioned in the paragraph above, you will receive an email notice when the public meeting notice is published and placed in the docket.

This document is issued under authority of 5 U.S.C. 552(a) and 46 U.S.C. 70034.

Dated: April 8, 2024.

Nicholas C. Seniuk,

Commander, U.S. Coast Guard, Seventh Coast Guard District Waterways Management.

[FR Doc. 2024–07704 Filed 4–10–24; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3030

[Docket No. RM2024–4; Order No. 7032]

RIN 3211–AA37

System for Regulating Rates and Classes for Market Dominant Products

AGENCY: Postal Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Advance Notice of Proposed Rulemaking seeks comment on the Commission's review of the system for regulating rates and classes for Market Dominant products (ratemaking system). The Commission previously reviewed the ratemaking system and adopted final rules via Order No. 5763. After the final rules took effect on January 14, 2021, the Postal Service filed five notices proposing to adjust rates for Market Dominant products, and Market Dominant volume and pieces have declined year-over-year. These declines and stakeholder concerns prompted the Commission to initiate another review of the ratemaking system. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES:

Comments are due: July 9, 2024.

Reply comments are due: August 13, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives. The Rule Summary can be found on the Commission's Rule Summary Page at *https://www.prc.gov/rule-summary-page.*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: Pursuant to 39 U.S.C. 503 and 3622(d)(3), the Commission finds that it is appropriate to initiate this proceeding to review the system for regulating rates and classes for Market Dominant products (collectively, ''ratemaking system'') to determine if the ratemaking system is achieving the objectives appearing in 39 U.S.C. 3622(b), taking into account the factors in 39 U.S.C. 3622(c). The Commission seeks comments regarding this review.

Interested persons are invited to provide written comments to facilitate the Commission's review of the ratemaking system. Commenters are encouraged to comment as generally or specifically as they deem appropriate. Below the Commission identifies specific topics on which it would particularly appreciate comment. However, commenters are not limited to addressing these identified topics—the Commission will consider all comments that fall within the scope of this proceeding.

1. Is the ratemaking system achieving the statutory objectives, while taking into account the statutory factors? Why or why not?

2. If the ratemaking system is not achieving the statutory objectives, while taking into account the statutory factors, should modifications be made or an alternative system be adopted to achieve the statutory objectives?

a. Why or why not?

b. If so, what modifications to the ratemaking system should be made or what alternative system should be adopted?

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2024–07635 Filed 4–10–24; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2023–0253; FRL–11850–01–R4]

Air Plan Approval; KY; Updates to Attainment Status Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet (Cabinet), Kentucky Division for Air Quality (KDAQ), submitted a revision to the Kentucky State Implementation Plan (SIP) on November 29, 2022. The SIP revision updates the geographical boundary description and attainment status designation for the Henderson-Webster nonattainment area for the 2010 Sulfur Dioxide (SO_2) primary National Ambient Air Quality Standards (NAAQS). The update is being made to conform Kentucky's attainment status tables with the federal attainment status designations made for this area. The SIP revision also includes minor language changes in the attainment status designations provisions. EPA is proposing to approve Kentucky's SIP revision pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before May 13, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2023–0253 at *http://www.regulations.gov.* 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 submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Ortiz can be reached via phone number (404) 562–8085 or via electronic mail at *ortizborrero.josue@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 29, 2022, the Cabinet submitted a SIP revision containing changes to 401 Kentucky Administrative Regulation (KAR) 51:010—*Attainment status designations,* State effective June 9, 2022, to be consistent with the SO_2 designation status codified by EPA at title 40 CFR part 81, subpart C as designated pursuant to section 107 of the CAA. Regulation 401 KAR 51:010 ''establishes the designation status of all areas of the Commonwealth of Kentucky with regard to attainment of the'' NAAQS. Specifically, the regulation compiles the designation status for the entire Commonwealth for the following NAAQS: ozone (O_3), fine particulate matter ($PM_{2.5}$), lead (Pb), carbon monoxide (CO), nitrogen dioxide (NO_2), SO_2, and Total Suspended Particles (TSP) in a tabular format that identifies the area and the legal geographical boundary description consistent with the designation status codified at 40 CFR part 81. Specifically, Kentucky's SIP submission adds the attainment status and the legal geographical boundary description for the Henderson-Webster nonattainment area for the 2010 SO_2 NAAQS as determined by EPA in SO_2 designations effective on April 14, 2021.[1] This update is being made to ensure Kentucky's attainment designation tables are consistent with those codified at 40 CFR 81.318 for the Commonwealth. Kentucky's proposed amendment to 401 KAR 51:010 also includes minor language changes as described below in Section II. The SIP submittal amending the Kentucky regulation to incorporate these changes can be found in the docket at *www.regulations.gov* and is summarized below.

A. NAAQS Review and Designations

Sections 108 and 109 of the CAA require EPA to set NAAQS for the criteria air pollutants: O_3, PM, CO, Pb, SO_2, and NO_2, and to undertake periodic review of these standards. After EPA sets a new NAAQS or revises an existing standard, the CAA requires EPA to determine if areas of the country meet the new standard and to designate areas as either nonattainment, attainment, or unclassifiable. Such designations inform the state's planning and implementation of requirements to achieve and maintain the NAAQS for each area within that state.

Section 107(d) of the CAA governs the process for these area designations. Under this process, states and tribes submit recommendations to EPA as to whether an area is attaining the NAAQS for criteria air pollutants. EPA then considers these recommendations as part of its obligation to promulgate the area designations and boundaries for the new or revised NAAQS. EPA codifies its designations for areas within each state in 40 CFR part 81.[2] Under section 107(d) of the CAA, a designation for an area remains in effect until redesignated by EPA.

B. SO_2 NAAQS Designations

On June 2, 2010, EPA revised the primary SO_2 NAAQS to provide requisite protection of public health with an adequate margin of safety. *See* 75 FR 35520 (June 22, 2010). Specifically, EPA established a new 1-hour daily maximum SO_2 standard at a level of 75 parts per billion (ppb), codified at 40 CFR 50.17. The CAA requires EPA to complete the designations process within two years of promulgating a new or revised standard or June 2012 for the 1-hour SO_2 NAAQS. If the Administrator has insufficient information to make these designations by that deadline, the EPA has the authority to extend the deadline for completing designations by up to one year. On July 27, 2012, EPA extended the deadline for area designations for the 2010 primary SO_2 standard from June 2012 by one year to June 2013 due to having insufficient information to make initial area designations in two years (77 FR 46295, August 3, 2012). With this extension, EPA completed initial designations on July 25, 2013 (78 FR 47191, August 5,

[1] *See* 86 FR 16055. This round of designations for the 2010 1-hour SO_2 NAAQS was signed on December 21, 2020 (86 FR 16055 (March 26, 2021)) and April 8, 2021 (86 FR 19576 (April 14, 2021)). These designations were signed by former EPA Administrator Andrew Wheeler on December 21, 2020, pursuant to a court-ordered deadline of December 31, 2020. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, former Acting Administrator Jane Nishida re-signed the same action on March 10, 2021, for publication in the **Federal Register**. EPA and state documents and public comments related to these final designations are in the docket at *regulations.gov* with Docket ID No. EPA–HQ–OAR–2020–0037 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[2] *See* 40 CFR 81.318 for designations for Kentucky.

2013) based on air quality monitoring data available at the time.[3] [4]

EPA completed the remaining area designations in three specific ''rounds'' of designations: July 2, 2016 (''Round 2''), December 31, 2017 (''Round 3''), and December 31, 2020 (''Round 4''). EPA designated the Henderson-Webster area [5] in Round 4 as nonattainment for the 2010 primary SO_2 NAAQS. This designation was effective on April 30, 2021 [6] and codified at 40 CFR 81.318.

II. Analysis of the Kentucky Submittal

Kentucky's November 29, 2022, submission updates the attainment status designation for the 2010 SO_2 NAAQS at section 9 of Regulation 401 KAR 51:010 to include an entry for the Henderson-Webster, KY SO_2 nonattainment area, which was designated by EPA in Round 4 SO_2 designations. The SIP submission also provides minor language changes. Specifically, the SIP revision amends the table in paragraph (2) of section 9 of 401 KAR 51:010 to reflect the nonattainment designation status and geographic boundaries for the Henderson-Webster area for the 2010 primary SO_2 NAAQS. Additionally, the text ''Henderson County (part) Census Block Groups 211010207013, 211010207014, 211010207024 and 211010208004'' was removed from the bottom section of the table, and the designated status of the area in the table was changed from ''Attainment/ Unclassifiable'' to ''Nonattainment''. Lastly, footnote 2, ''(2) Excluding Webster and the remainder of Henderson County'' was removed because the table is now amended to include a specific designation for the Henderson-Webster area.

Kentucky's SIP revision also provides minor language changes to 401 KAR 51:010. The revision replaces the text ''designates the status'' with the phrase ''establishes the designation status'' in reference to the purpose of the rule. In section 2, paragraph (1), the phrase ''shall be as listed'' replaces ''is listed'' in reference to the NAAQS listed in sections 4 through 10 of 401 KAR 51:010. Subparagraph 3 is revised by replacing ''defines'' with ''delineates'' in the sentence ''A road, junction, or intersection of two (2) or more roads as used in Section 7 of this administrative regulation that defines a nonattainment boundary for an area that is a portion of a county designated as nonattainment for ozone for any classification except marginal, shall include as nonattainment an area extending 750 feet from the center of the road, junction, or intersection.'' Also, Kentucky removed the reference to section 7 in that sentence because section 7 specifies that it applies to ozone nonattainment areas.

EPA is proposing to approve the November 29, 2022, submission which amends paragraph (2) of section 9 in 401 KAR 51:010 to include the nonattainment designation status for the Henderson-Webster area for the 2010 primary SO_2 NAAQS and make the other changes described above. EPA has reviewed these changes and is proposing to find that they are consistent with the CAA and its implementing regulations.

III. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in sections I and II of this preamble, EPA is proposing to incorporate by reference Kentucky Regulation 401 KAR 51:010, *Attainment status designations,* state effective on June 9, 2022, which was revised to be consistent with the federal attainment status designations for the areas within the Commonwealth. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve Kentucky's November 29, 2022, SIP revision described above, which among other things, updates regulation 401 KAR 51:010 to amend the attainment status designation for the Henderson-Webster SO_2 nonattainment area for the 2010 primary SO_2 NAAQS in accordance with the designations codified in 40 CFR 81.318. EPA is proposing to approve these changes because they are consistent with the CAA and its implementing regulations.

V. 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 Clean Air 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 proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

[3] EPA completed the first round of SO_2 designations on July 25, 2013, designating 29 areas in 16 states as nonattainment (78 FR 47191, August 5, 2013). EPA based this first round of SO_2 designations on monitored SO_2 concentrations from Federal Reference Method and Federal Equivalent Method monitors that were sited and operated in accordance with 40 CFR parts 50 and 58.

[4] Following the initial August 5, 2013, designations, three lawsuits were filed against EPA in different U.S. District Courts, alleging the agency had failed to perform a nondiscretionary duty under the CAA by not designating all portions of the country by the June 2, 2013, deadline. In an effort intended to resolve the litigation in one of those cases, EPA and the plaintiffs—Sierra Club, and the Natural Resources Defense Council—filed a proposed consent decree with the U.S. District Court for the Northern District of California. On March 2, 2015, the court entered the consent decree and issued an enforceable order for EPA to complete the area designations by three specific deadlines according to the court-ordered schedule.

[5] The nonattainment area is comprised of Henderson County (partial) and Webster County (partial) and was designated nonattainment based on the 2017–2019, 3-year design value at the Sebree ambient air quality monitor (AQS ID: 21–101–1011). *See* EPA, Technical Support Document: Chapter 3 Intended Round 4 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Kentucky, available at *https://www.epa.gov/sites/default/files/2020-08/documents/03-ky-rd4_intended_so2_designations_tsd.pdf.*

[6] *See* 86 FR 19576 (April 14, 2021).

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: April 5, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

[FR Doc. 2024–07702 Filed 4–10–24; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 89, No. 71
Thursday, April 11, 2024

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.

UNITED STATES AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The U.S. African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration. This meeting will occur at the USADF office.

DATES: The meeting date is Tuesday, April 30, 2024, 9:00 a.m. to 12:00 noon.

ADDRESSES: The meeting location is USADF, 1400 I St. NW, Suite 1000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kerline Perry, (202)233–8805.

Authority: Public Law 96–533 (22 U.S.C. 290h).

Dated: April 4, 2024.

Wendy Carver,

Business Manager.

[FR Doc. 2024–07647 Filed 4–10–24; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 13, 2024 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.

Animal Plant and Health Inspection Service

Title: Commercial Transportation of Equines for Slaughter.

OMB Control Number: 0579–0332.

Summary of Collection: Section 901–905 of the Federal Agriculture Improvement and Reform Act of 1996 (*7 U.S.C. 1901*) authorize the Secretary of Agriculture to issue guidelines for regulating the commercial transportation of equine for slaughter, by persons regularly engaged in that activity within the United States. Specifically, the Secretary is authorized to regulate the food, water, and rest provided to the equines while they are in transit and to review related issues be appropriate to ensuring that these animals are treated humanely. To implement the provisions of this Act, the Veterinary Services program of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has established minimum standards to ensure the humane movement of equines for slaughter.

Need and Use of the Information: APHIS will collect information in the form of owner-shipper certificates of fitness to travel to slaughter facility; certificate of veterinary inspection; application of backtags; collection of business information on any person found to be transporting horses to a slaughtering facility; and recordkeeping. The collected information is use to ensure that equines being transported for slaughter receive adequate food, water, and rest and are treated humanely. If the information was collected less frequently or not collected, APHIS' ability to ensure that equines destined for slaughter are treated humanely would be significantly hampered.

Description of Respondents: 200 Business or other for profit, 30 Individuals or Households, and (2) Federal Government.

Number of Respondents: 232.

Frequency of Responses: Reporting: On occasion; Recordkeeping, and Third-Party Disclosure:

Total Burden Hours: 4,049.

Rachelle Ragland-Greene,

Acting Departmental Information Collection Clearance Officer.

[FR Doc. 2024–07724 Filed 4–10–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Solicitation of Nominations for Membership for the Eastern Region Recreation Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Solicitation of nominations for membership.

SUMMARY: The United States Department of Agriculture (Department) is seeking nominations for the Eastern Region Recreation Resource Advisory Committee (Eastern Region Recreation RAC) pursuant to the authority of the Federal Lands Recreation Enhancement Act and the Federal Advisory Committee Act (FACA), as amended. The Eastern Region Recreation RAC will provide recommendations to the Secretary of Agriculture on recreation fees on lands and waters managed by the Forest Service and the Department

of the Interior's Bureau of Land Management in the regions covered by each committee. The Eastern Region Recreation RAC will be governed by the provisions of FACA. Duration of the Eastern Region Recreation RAC is for two years unless renewed by the Secretary.

DATES: Nominations must be submitted via email or postmarked by May 31, 2024.

ADDRESSES: Nominations and resumes may be submitted to the Secretary of Agriculture through the Forest Service via Krystal Fleeger, Regional Recreation Fees and Reservations Coordinator, Eastern Regional Office, 626 E Wisconsin Ave., Milwaukee, WI 53202 or via email to *sm.fs.r9_rrac@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Inquiries may be sent to Krystal Fleeger, Regional Recreation Fees and Reservations Coordinator, Eastern Region, USDA Forest Service, Eastern Regional Office, 626 E Wisconsin Ave., Milwaukee, WI 53202, 503–828–0349 or via email *sm.fs.r9_rrac@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Federal Lands Recreation Enhancement Act (Pub. L. 108–447) and the Federal Advisory Committee Act (5 U.S.C. 10), notice is hereby given the Secretary of Agriculture's intent to solicit members. Additional information on the Eastern Region Recreation RAC can be found by visiting the committee website at *https://www.fs.usda.gov/main/r9/workingtogether/advisorycommittees.*

Eastern Region Recreation RAC Membership

The Eastern Region Recreation RAC will be comprised of 11 members approved by the Secretary of Agriculture where each will serve a two or three-year term. Memberships shall include representation from the following interest areas:

1. Five persons who represent:
   a. Winter motorized such as snowmobiling;
   b. Winter non-motorized such cross-country skiing, snowshoeing;
   c. Summer motorized recreation such as motorcycling, boating, and off-highway vehicle driving;
   d. Summer nonmotorized recreation such as hiking, horseback riding, mountain biking, canoeing, and rafting; and
   e. Hunting and fishing.
2. Three persons who represent:
   a. Motorized outfitters and guides;
   b. Non-motorized outfitters and guides; and
   c. Local environmental groups.
3. Three persons who represent:
   a. State tourism official representing the State;
   b. A representative of affected Indian tribes; and
   c. A representative of affected local government interests.

Membership Nomination Information

The appointment of members to the Eastern Region Recreation RAC will be made by the Secretary of Agriculture, or their designee. Any interested person or organization may nominate qualified individuals for membership. Interested candidates may nominate themselves. Individuals who wish to be considered for membership on the committee must submit a nomination with information, including a background disclosure form (Form AD–755, *https://www.usda.gov/sites/default/files/documents/ad-755.pdf*). Nominations should be typed and include the following:

1. If nominating an individual, a brief summary, no more than two pages, explaining the nominee's qualifications to serve on the committee and addressing the membership composition and criteria described above.
2. A resume providing the nominee's background, experience, and educational qualifications.
3. A completed background disclosure form (Form AD–755) signed by the nominee.
4. Letters of endorsement are optional.

Persons with disabilities who require alternative means of communication for program information (Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: April 4, 2024.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2024–07623 Filed 4–10–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Mink Survey. A revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by June 10, 2024 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0212, by any of the following methods:

- *Email: OMBofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph L. Parsons, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without

charge from Richard Hopper, NASS—OMB Clearance Officer, at (202) 720–2206 or at *omboffi cer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mink Survey.

OMB Number: 0535–0212.

Expiration Date of Approval: January 31, 2025.

Type of Request: Intent to seek approval to revise and extend an information collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Mink Survey collects data on the number of mink pelts produced, the number of females bred, the value of pelts produced, and the number of mink farms. Mink estimates are used by the federal government to calculate total value of sales and total cash receipts, by State governments to administer fur farm programs and health regulations, and by universities in research projects. States included in this survey are California, Idaho, Illinois, Iowa, Michigan, Minnesota, Montana, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Dakota, Utah, Virginia, Washington, and Wisconsin.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, title III of Public Law 115–435, codified in 44 U.S.C. ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA. NASS uses the information only for statistical purposes and publishes only tabulated total data.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response for the producers and approximately 30 minutes per response for the buyers. NASS plans to mail out publicity materials with the questionnaires to inform operators of the importance of these surveys. NASS will also use multiple mailings, followed up with phone and personal enumeration to increase response rates and to minimize data collection costs.

Respondents: Farmers and ranchers.

Estimated Number of Respondents: 160.

Estimated Total Annual Burden on Respondents: 50 hours.

Comments: Comments are invited on: (a) 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; (b) 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) 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 those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, March 22, 2024.

Joseph L. Parsons,

Associate Administrator.

[FR Doc. 2024–07690 Filed 4–10–24; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Egg, Chicken, and Turkey Surveys. A revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by June 10, 2024 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0004, by any of the following methods:

- *Email: OMBofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph L. Parsons, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS—OMB Clearance Officer, at (202) 720–2206 or at *omboffi cer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Egg, Chicken, and Turkey Surveys.

OMB Number: 0535–0004.

Expiration Date of Approval: January 31, 2025.

Type of Request: Intent to seek approval to revise and extend an information collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition. The Egg, Chicken, and Turkey Surveys obtain basic poultry statistics from voluntary cooperators throughout the Nation. Statistics are published on placement of pullet chicks for hatchery supply flocks; hatching reports for broiler-type, egg-type, and turkey eggs; number of layers on hand; total table egg production; and production and value estimates for eggs, chickens, and turkeys. The frequencies of the surveys being conducted include weekly, monthly, and annually. This information is used by producers, processors, feed dealers, and others in marketing and supply channels as a basis for production and marketing decisions. Government agencies use these estimates to evaluate poultry

product supplies. The information is an important consideration in government purchases for the National School Lunch Program and in formulation of export-import policy.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, title III of Public Law 115–435, codified in 44 U.S.C. ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA. NASS uses the information only for statistical purposes and publishes only tabulated total data.

Estimate of Burden: Public reporting burden for this collection of information is estimated between 8 and 35 minutes per respondent per survey. Additional burden is allowed for the inclusion of publicity materials and instructions on how to respond to the surveys via the internet.

Respondents: Farmers, ranchers, farm managers, and farm contractors.

Estimated Number of Respondents: 2,700.

Estimated Total Annual Burden on Respondents: 4,050 hours. This will include burden for both the initial mailing and phone follow-up to non-respondents, as well as publicity and instruction materials mailed out with questionnaires.

Comments: Comments are invited on: (a) 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; (b) 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) 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 those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, March 22, 2024.

Joseph L. Parsons,

Associate Administrator.

[FR Doc. 2024–07691 Filed 4–10–24; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via ZoomGov on Wednesday, April 24, 2024, from 2:00 p.m.–3:00 p.m. Pacific Time, for the purpose of discussing their policy brief and other post-report activities.

DATES: The meeting will take place on:

- Wednesday, April 24, 2024, at 2:00 p.m. PT.

Zoom Webinar Link to Join: https://www.zoomgov.com/webinar/register/WN_0edOQ8MHTRCSqAa9PiKSXw.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, DFO, at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Closed captions will be provided for individuals who are deaf or hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Angelica Trevino, Support Services Specialists, at *atrevino@usccr.gov* at least 10 business days prior to the meeting.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Washington Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *atrevino@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: April 4, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–07561 Filed 4–10–24; 8:45 am]

BILLING CODE 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 virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New York Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to vote on the Committee's draft report.

DATES: Friday, April 19, 2024, from 1 p.m. eastern time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://bit.ly/43svxQG.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll Free; Webinar ID: 161 266 1826#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 1–202–809–9618.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant to the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, New York Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome, Roll Call, Approval of Minutes
II. Vote: Report
III. Public Comment
IV. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of providing Committee members extended time to provide edits to their draft report prior to their final vote.

Dated: April 5, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–07634 Filed 4–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–14–2024]

Foreign-Trade Zone (FTZ) 297, Notification of Proposed Production Activity; Twin Disc, Inc.; (Power Transmission Products); Lufkin, Texas

Twin Disc, Inc. submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Lufkin, Texas within Subzone 297A. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on April 4, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed foreign-status material/component is cellulose fiber gaskets (duty rate is duty-free). The request indicates the material/component is subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232) or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 21, 2024.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: April 5, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–07687 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on May 1 and 2, 2024, 9:00 a.m., Eastern Daylight Time, in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

Wednesday, May 1

Open Session

1. Welcome and Introductions
2. Working Group Reports
3. Open Business
4. Industry Presentation

Thursday, May 2

Closed Session

5. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than April 24, 2024.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 15, 2024, pursuant to 5 U.S.C. chapter 10 of the FACA, (5 U.S.C. 1009(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2024–07679 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

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

SUMMARY: The U.S. Department of Commerce (Commerce) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period July 1, 2023, through December 31, 2023.

DATES: Comments must be submitted within 30 days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008), the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies. Commerce submitted its last subsidy report to the Congress on December 28, 2023.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries which had exports accounting for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 4407.1100, 4407.1200, 4407.1300, 4407.1400, and 4407.1900, during the period July 1, 2023, through December 31, 2023. Official U.S. import data, published by the United States International Trade Commission's DataWeb, indicate that five countries (Austria, Brazil, Canada, Germany, and Sweden) exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we intend to rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1, 2024, through June 30, 2024, to select the countries subject for the next report.

Under U.S. trade law, a subsidy exists where an authority: (i) provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the General Agreements on Tariffs and Trade 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred.[1]

Parties should include in their comments: (1) the country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (no more than 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comments

As specified above, to be assured of consideration, comments must be received no later than 30 days after the publication of this notice in the **Federal Register**. All comments must be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov,* Docket No. ITA–2024–0003. The materials in the docket will not be edited to remove identifying or contact information, and Commerce cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only.

All comments should be addressed to Ryan Majerus, Deputy Assistant Secretary for Policy and Negotiations, at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Dated: April 5, 2024.

Ryan Majerus,

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

[FR Doc. 2024–07686 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–060, A–533–875, A–580–893, A–583–860, C–570–061, C–533–876]

Fine Denier Polyester Staple Fiber From the People's Republic of China, India, the Republic of Korea, and Taiwan: Continuation of Antidumping and Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty

[1] *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

(AD) orders on fine denier polyester staple fiber (fine denier PSF) from the People's Republic of China (China), India, the Republic of Korea (Korea), and Taiwan and countervailing duty (CVD) orders on fine denier PSF from China and India would likely lead to continuation or recurrence of dumping and net countervailable subsidies, and material injury to an industry in the United States, Commerce is publishing this notice of continuation of these AD and CVD orders.

DATES: Applicable April 5, 2024.

FOR FURTHER INFORMATION CONTACT: Luke Caruso or Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2081 or (202) 482–3936, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2018, Commerce published in the **Federal Register** the CVD orders on fine denier PSF from China and India.[1] On July 20, 2018, Commerce published in the **Federal Register** the AD orders on fine denier PSF from China, India, Korea, and Taiwan.[2] On February 1, 2023, the ITC instituted,[3] and Commerce initiated,[4] the first sunset reviews of the *AD Orders* and *CVD Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *AD Orders* and *CVD Orders* would likely lead to the continuation or recurrence of dumping and countervailable subsidies, and therefore, notified the ITC of the magnitude of the margins of dumping and subsidy rates likely to prevail should the *AD Orders* and *CVD Orders* be revoked.[5]

On April 5, 2024, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the *AD Orders* and *CVD Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[6]

Scope of the AD Orders and CVD Orders

The merchandise covered by the *AD Orders* and *CVD Orders* is fine denier polyester staple fiber (fine denier PSF), not carded or combed, measuring less than 3.3 decitex (3 denier) in diameter. The scope covers all fine denier PSF, whether coated or uncoated. The following products are excluded from the scope:

(1) PSF equal to or greater than 3.3 decitex (more than 3 denier, inclusive) currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 5503.20.0045 and 5503.20.0065.

(2) Low-melt PSF defined as a bi-component polyester fiber having a polyester fiber component that melts at a lower temperature than the other polyester fiber component, which is currently classifiable under HTSUS subheading 5503.20.0015.

Fine denier PSF is classifiable under the HTSUS subheading 5503.20.0025. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *AD Orders* and *CVD Orders* is dispositive.

Continuation of the AD Orders and CVD Orders

As a result of the determinations by Commerce and the ITC that revocation of the *AD Orders* and the *CVD Orders* would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *AD Orders* and the *CVD Orders.* U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *AD Orders* and *CVD Orders* will be April 5, 2024.[7] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next sunset review of the *AD Orders* and the *CVD Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: April 5, 2024.

Ryan Majerus,

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

[FR Doc. 2024–07692 Filed 4–10–24; 8:45 am]

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[1] *See Fine Denier Polyester Staple Fiber from the People's Republic of China and India: Amended Final Affirmative Countervailing Duty Determination for the People's Republic of China and Countervailing Duty Orders for the People's Republic of China and India,* 83 FR 11681 (March 16, 2018) (collectively, *CVD Orders*).

[2] *See Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of Korea, and Taiwan: Antidumping Duty Orders,* 83 FR 34545 (July 20, 2018) (collectively, *AD Orders*).

[3] *See Fine Denier Polyester Staple Fiber from China, India, South Korea, and Taiwan; Institution of Five-Year Reviews,* 88 FR 6790 (February 1, 2023).

[4] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 6700 (February 1, 2023).

[5] *See Fine Denier Polyester Staple Fiber from the People's Republic of China, India, the Republic of South Korea, and Taiwan: Final Results of Expedited First Sunset Reviews of the Antidumping Duty Orders,* 88 FR 37512 (June 8, 2023); *see also Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 88 FR 36278 (June 2, 2023); *Fine Denier Polyester Staple Fiber from India: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order,* 88 FR 37513 (June 8, 2023).

[6] *See Fine Denier Polyester Staple Fiber From China, India, South Korea, and Taiwan,* 89 FR 24033 (April 5, 2024).

[7] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–093]

Refillable Stainless Steel Kegs From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Guangzhou Jingye Machinery Co., Ltd. (Jingye), Guangzhou Ulix Industrial & Trading Co., Ltd. (Ulix), and the remaining 39 companies for which the administrative review was initiated, are not eligible for separate rates and are therefore, part of the People's Republic of China (China)-wide entity. The period of review (POR) is December 1, 2021, through November 30, 2022.

DATES: Applicable April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis or Jacob Keller, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3147 and (202) 482–4849, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2023, Commerce published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on refillable stainless steel kegs from China and invited interested parties to comment.[1] For a complete description of the events that occurred since Commerce published the *Preliminary Results, see* the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The merchandise covered by this *Order* are kegs, vessels, or containers with bodies that are approximately cylindrical in shape, made from stainless steel (*i.e.,* steel containing at least 10.5 percent chromium by weight and less than 1.2 percent carbon by weight, with or without other elements), and that are compatible with a ''D Sankey'' extractor (refillable stainless steel kegs) with a nominal liquid volume capacity of 10 liters or more, regardless of the type of finish, gauge, thickness, or grade of stainless steel, and whether or not covered by or encased in other materials. The merchandise covered by the *Order* are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7310.10.0010, 7310.10.0050, 7310.29.0025, and 7310.29.0050. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the *Order* is dispositive. A full description of the scope of the *Order* is provided in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the briefs filed by interested parties are addressed in the Issues and Decision Memorandum and are listed in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results and Referral to U.S. Customs and Border Protection

Based on record information, Commerce determines that all 41 companies subject to this administrative review are a part of the China-wide entity.[4] For reasons discussed in the Issues Decision Memorandum, Commerce is treating Ulix and Jingye as part of the China-wide entity, and Commerce referred its findings to U.S. Customs and Border Protection (CBP) to investigate potential evasion of the *Order.*

China-Wide Entity

Commerce considers the 41 companies for which a review was requested (which did not file a separate rate application or did not demonstrate separate rate eligibility) listed in Appendix II to this notice, to be part of the China-wide entity.[5]

Assessment Rates

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).[6] Commerce will instruct CBP to apply an *ad valorem* assessment rate of 63.60 percent to all entries of subject merchandise during the POR which were exported by the companies considered to be a part of the China-wide entity listed in Appendix II of this notice.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for any previously investigated or reviewed Chinese or non-Chinese exporter that has a separate rate, the cash deposit rate will continue to be the exporter's existing cash deposit rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate and identified in Appendix II of this notice, the cash deposit rate will be that for the China-wide entity (*i.e.,* 63.60 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

Notification to Interested Parties

We are issuing and publishing these final results of review in accordance with sections 751(a)(l) and 777(i) of the Act, and 19 CFR 351.213(h)(1) and 351.221(b)(5).

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[1] *See Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2021–2022,* 88 FR 85230 (December 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Refillable Stainless Steel Kegs from the People's Republic of China; 2021–2022,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Refillable Stainless Steel Kegs from the Federal Republic of Germany and the People's Republic of China: Antidumping Duty Orders,* 84 FR 68405 (December 16, 2019) (*Order*).

[4] *See* Appendix II.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 7060 (February 2, 2023) (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving {non-market economy} countries must complete, as appropriate, either a separate rate application or certification, as described below.''); *see also* Appendix II for the list of companies that are subject to this administrative review that are considered to be part of the China-wide entity.

[6] *See* 19 CFR 351.212(b)(1).

Dated: April 4, 2024.

Ryan Majerus,

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

Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

Appendix II—Companies Considered To Be Part of the China-Wide Entity

1. Dalian Yonghseng Metal Structure Co., Ltd. d/b/a DYM Brewing Solutions
2. Equipmentimes (Dalian) E-Commerce Co., Ltd.
3. Guangzhou Jingye Machinery Co., Ltd.
4. Guangzhou Ulix Industrial & Trading Co., Ltd.
5. Jinan Chenji International Trade Co., Ltd.
6. Jinan Chenji Machinery Equipment Co., Ltd.
7. Jinan HaoLu Machinery Equipment Co., Ltd.
8. Jinjiang Jiaxing Import and Export Co., Ltd.
9. NDL Keg Qingdao Inc.
10. Ningbo All In Brew Technology Co.
11. Ningbo BestFriends Beverage Containers Industry Co., Ltd.
12. Ningbo Chance International Trade Co., Ltd.
13. Ningbo Direct Import & Export Co., Ltd.
14. Ningbo Haishu Direct Import and Export Trade Co., Ltd.
15. Ningbo Haishu Xiangsheng Metal Factory
16. Ningbo Hefeng Container Manufacturer Co., Ltd.
17. Ningbo Hefeng Kitchen Utensils Manufacture Co., Ltd.
18. Ningbo HGM Food Machinery Co., Ltd.
19. Ningbo Jiangbei Bei Fu Industry and Trade Co., Ltd.
20. Ningbo Kegco International Trade Co., Ltd.
21. Ningbo Kegstorm Stainless Steel Co., Ltd.
22. Ningbo Minke Import & Export Co., Ltd.
23. Ningbo Sanfino Import & Export Co., Ltd.
24. Ningbo Shimaotong International Co., Ltd.
25. Ningbo Sunburst International Trading Co., Ltd.
26. Orient Equipment (Taizhou) Co., Ltd.
27. Penglai Jinfu Stainless Steel Products.
28. Pera Industry Shanghai Co., Ltd.
29. Qingdao Henka Precision Technology Co., Ltd.
30. Qingdao Xinhe Precision Manufacturing Co., Ltd.
31. Rain Star International Trading Dalian Co., Ltd.
32. Shandong Meto Beer Equipment Co., Ltd.
33. Shandong Tiantai Beer Equipment Co., Ltd.
34. Shandong Tonsen Equipment Co., Ltd.
35. Shandong Yuesheng Beer Equipment Co., Ltd.
36. Shenzhen Wellbom Technology Co., Ltd.
37. Sino Dragon Group, Ltd.
38. Wenzhou Deli Machinery Equipment Co.
39. Wuxi Taihu Lamps and Lanterns Co., Ltd.
40. Yantai Toptech Ltd.
41. Yantai Trano New Material Co., Ltd., d/b/a Trano Keg, d/b/a SS Keg.

[FR Doc. 2024–07671 Filed 4–10–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on hydrofluorocarbon blends (HFC blends) from the People's Republic of China (China) to correct ministerial errors. Based on the amended final results, we find that the sole mandatory respondent, Zhejiang Sanmei Chemical Industry Co., Ltd. (Sanmei) sold HFC blends in the United States at less than normal value (NV) during the period of review (POR) August 1, 2021, through July 31, 2022.

DATES: Applicable April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Jerry Xiao, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2273.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2024, Commerce published in the **Federal Register** the final results of the 2021–2022 administrative review of the AD order on HFC blends from China.[1] On March 6, 2024, Commerce disclosed its calculations and provided interested parties with the opportunity to submit ministerial error comments.[2] On March 8 and 11, 2024, Sanmei, the sole mandatory respondent in this administrative review and the American HFC Coalition (the petitioner), respectively, timely submitted allegations of ministerial errors in the *Final Results*.[3] On March 13, 2024, the petitioner submitted rebuttal comments regarding Sanmei's ministerial error allegation.[4] Commerce is amending the *Final Results* to correct these ministerial errors.

Legal Framework

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (the Act), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.'' [5] With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review.''

Ministerial Error

Commerce determined that it made inadvertent errors within the meaning of section 751(h) of the Act and 19 CFR 351.224(f) with respect to certain calculations regarding the following: (1) a surrogate freight cost for a utility input; (2) the resulting total value of that input; and (3) the value of perchloroethylene, an input used to make HFC blends. Accordingly, we determine, in accordance with section 751(h) of the Act and 19 CFR 351.224(f), that we made ministerial errors in the *Final Results.* Pursuant to 19 CFR 351.224(e), we are amending the *Final Results* to correct these errors. These corrections result in a change to Sanmei's weighted-average dumping margin. For a complete description and analysis of the specific inadvertent errors and a discussion of the ministerial error allegations, *see* the accompanying Ministerial Error Allegation Memorandum.[6] The Ministerial Error Allegation

[1] *See Hydrofluorocarbon Blends from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2021–2022,* 89 FR 16726 (March 8, 2024) (*Final Results*), and accompanying Issues and Decision Memorandum.

[2] *See* Memorandum, ''Deadline to Submit Ministerial Error Allegations,'' dated March 6, 2024.

[3] *See* Sanmei's Letter, ''Zhejiang Sanmei's Ministerial Error Comments,'' dated March 8, 2024; *see also* Petitioner's Letter, ''HFC Coalition's Ministerial Error Allegation,'' dated March 11, 2024.

[4] *See* Petitioner's Letter, ''HFC Coalition's Rebuttal to Sanmei's Ministerial Error Allegation,'' dated March 13, 2024.

[5] *See* 19 CFR 351.224(f).

[6] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China; 2021–2022: Ministerial Error Allegation in the Final Results,'' dated concurrently with this notice (Ministerial Error Allegation Memorandum).

Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

Amended Final Results of Review

As a result of correcting these ministerial errors, Commerce determines that the following estimated weighted-average dumping margin exists for the period August 1, 2021, through July 31, 2022:

Exporter	Weighted-average dumping margin (percent)
Zhejiang Sanmei Chemical Industry Co., Ltd	96.94

Disclosure

Commerce intends to disclose the calculations performed in connection with these amended final results of review to interested parties within five days after public announcement of the amended final results or, if there is no public announcement, within five days of the date of publication of the notice of amended final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review.

For Sanmei, Commerce calculated importer-specific assessment rates for antidumping duties, in accordance with 19 CFR 351.212(b)(1). Where the respondent reported reliable entered values, Commerce calculated importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer and dividing this amount by the total entered value of the merchandise sold to the importer. Where the respondent did not report entered values, we calculated importer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported. Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[7]

For entries that were not reported in the U.S. sales database submitted by Sanmei, Commerce will instruct CBP to liquidate such entries at the China-wide rate.[8]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the amended final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following amended cash deposit requirements will be effective retroactively upon publication of the amended final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) for the exporter listed above, Sanmei, the amended cash deposit rate will be equal to the weighted-average dumping margin established in the amended final results of this review; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that currently have a separate rate, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding where the exporter received that separate rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 216.37 percent); and (4) for all non-Chinese exporters of subject merchandise that have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(h) and 777(i) of the Act, and 19 CFR 351.224(e).

Dated: April 4, 2024.

Ryan Majerus,

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

[FR Doc. 2024–07680 Filed 4–10–24; 8:45 am]

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[7] *See* 19 CFR 351.106(c)(2).

[8] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–094]

Refillable Stainless Steel Kegs From the People's Republic of China: Final Results of the Countervailing Duty Administrative Review; 2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being

provided to producers and exporters of refillable stainless steel kegs (kegs) from the People's Republic of China (China), during the period of review (POR) January 1, 2021, through December 31, 2021.

DATES: Applicable April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631.

SUPPLEMENTARY INFORMATION:

Background

On November 6, 2023, Commerce published the preliminary results of this administrative review in the **Federal Register** and invited interested parties to comment.[1] We received no comments from interested parties on the *Preliminary Results,* and we have made no changes from the *Preliminary Results.* Accordingly, no decision memorandum accompanies this **Federal Register** notice. The *Preliminary Results* are hereby adopted in these final results. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by this order are kegs from China. For a complete description of the scope of the order, *see* the *Preliminary Results.*

Final Results of Review

For the period January 1, 2021, through December 31, 2021, we determine that the following net countervailable subsidies exist:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Guangzhou Ulix Industrial & Trading Co., Ltd	2.48
Ningbo Master International Trade Co., Ltd[2]	2.41

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct U.S. Customs and Border Protection (CBP) to collect cash deposits of estimated countervailing duties in the amounts shown for the companies listed above for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), upon completion of the administrative review, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries of subject merchandise covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Disclosure

Normally, Commerce discloses to interested parties the calculations of the final results of an administrative review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes to the *Preliminary Results,* there are no calculations to disclose.

Administrative Protective Order

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

Notification to Interested Parties

Commerce is issuing and publishing these final results of this review in accordance with sections 751(a)(1) and 777(i) of the Act, and 351.221(b)(5).

Dated: April 4, 2024.

Ryan Majerus,

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

[FR Doc. 2024–07670 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Refillable Stainless Steel Kegs from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Administrative Review, in Part; 2021,* 88 FR 86111 (December 12, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] Commerce previously found, and continues to find, the following companies to be cross-owned with Ningbo Master: Ningbo Major Draft Beer Equipment Co., Ltd. and Zhejiang Major Technology Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

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

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

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

DATES: Applicable April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Benjamin Nathan, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3834.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2016, Commerce published in the **Federal Register** the AD order on HFC blends from China.[1]

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

On July 7, 2023, Commerce initiated a country-wide circumvention inquiry to determine whether imports of R–410B, R–407G, and a custom HFC blend which are blended in China using China-origin HFC components and further processed in the United States are circumventing the *Order* and, accordingly, should be covered by the scope of the *Order,* pursuant to section 781(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.226(h).[2] In September 2023, Commerce selected the following two mandatory respondents in this circumvention inquiry: HFC Investments LLC (HFC Investments) and TT International Co., Ltd. (TTI).[3] On November 20, 2023, Commerce extended the deadline for issuing the preliminary determination in this circumvention inquiry until March 1, 2024.[4] On February 27, 2024, Commerce further extended the deadline for the preliminary determination until April 5, 2024.[5] For a complete description of the events that followed the initiation of this circumvention inquiry, *see* the Preliminary Decision Memorandum.[6]

Scope of the Order

The merchandise covered by the *Order* is certain HFC blends. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[7]

Merchandise Subject to the Circumvention Inquiry

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

Methodology

Commerce is conducting this circumvention inquiry in accordance with section 781(a) of the Act, and 19 CFR 351.226. For a complete description of the methodology underlying this circumvention inquiry, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included in Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Preliminary Circumvention Determination

As detailed in the Preliminary Decision Memorandum, Commerce preliminarily determines that R–410B, R–407G, and a certain custom HFC blend which are blended in China using China-origin HFC components and further processed in the United States are circumventing the *Order* on a country-wide basis. As a result, in accordance with section 781(a) of the Act, we preliminarily determine that the inquiry merchandise should be included within the scope of the *Order. See* the ''Suspension of Liquidation and Cash Deposit Requirements'' section below for details regarding suspension of liquidation and cash deposit requirements. *See* the ''Certifications'' and ''Certification Requirements'' sections below for details regarding the use of certifications for inquiry merchandise imported from China.

Suspension of Liquidation

Based on the preliminary affirmative country-wide determination of circumvention for China, in accordance with section 19 CFR 351.226(l)(2), Commerce will direct U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of previously suspended entries and to suspend liquidation and require a cash deposit of estimated duties on unliquidated entries of R–410B, R–407G, and a certain custom HFC blend that were entered, or withdrawn from warehouse, for consumption on or after July 7, 2023, the date of publication of the initiation of this circumvention inquiry in the **Federal Register**.[8]

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

Where no certification is provided for an entry, and the *Order* potentially applies to that entry, Commerce intends to instruct CBP to suspend the entry and collect cash deposits: (1) for entries of R–410B, R–407G, and a certain custom HFC blend for which the exporter has a company-specific cash deposit rate under the AD *Order,* the cash deposit rate will be the company-specific AD cash deposit rate established for that company in the most recently completed segment of the proceeding; (2) for all Chinese exporters of R–410B, R–407G, and a certain custom HFC blend that do not have a company-specific cash deposit rate under the AD *Order,* the AD cash deposit rate will be the cash deposit rate for the China-wide entity (*i.e.,* 216.37 percent);[9] (3) for all non-Chinese exporters of R–410B, R–407G, and a certain custom HFC blend which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These suspension of liquidation instructions and cash deposit requirements will remain in effect until further notice.

Certified Entries

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

Certifications

To administer the preliminary affirmative country-wide determination of circumvention, Commerce established importer certifications, which allow companies to certify that specific entries of R–410B, R–407G, and a certain custom HFC blend are not subject to suspension of liquidation or the collection of cash deposits pursuant

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

[3] *See* Memorandum, ''Respondent Selection,'' dated September 21, 2023; *see also* Commerce's Letter, ''U.S. Custom Blends Initial Questionnaire,'' dated September 21, 2023.

[4] *See* Memorandum, ''Extension of Preliminary Determination in Circumvention Inquiry,'' dated November 20, 2023.

[5] *See* Memorandum, ''Extension of Preliminary Determination in Circumvention Inquiry,'' dated February 27, 2024.

[6] *See* Memorandum, ''Preliminary Decision Memorandum for the Circumvention Inquiry with Respect to U.S. Custom Blends,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] *Id.* at 3–4.

[8] *See Initiation Notice.*

[9] *See Order.*

to this preliminary affirmative country-wide determination of circumvention because the merchandise is not further processed into subject HFC blends in the United States (*see* Appendix II to this notice).

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

Certification Requirements

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

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

For all R–410B, R–407G, and a certain custom HFC blend from China that was entered, or withdrawn from warehouse, for consumption during the period July 7, 2023 (the date of initiation of this circumvention inquiry), through the date of publication of the preliminary determination in the **Federal Register**, where the entry has not been liquidated (and entries for which liquidation has not become final), the relevant certification should be completed and signed as soon as practicable, but not later than 45 days after the date of publication of this preliminary determination in the **Federal Register**. For such entries, importers have the option to complete a blanket certification covering multiple entries, individual certifications for each entry, or a combination thereof.

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

If it is determined that an importer has not met the certification and/or related documentation requirements for certain entries, Commerce intends to instruct CBP to suspend, pursuant to this preliminary affirmative country-wide determination of circumvention and the *Order,*[10] all unliquidated entries for which these requirements were not met and to require the importer to post applicable cash deposits equal to the rate noted above.

Interested parties may comment on these certification requirements, and on the certification language contained in Appendix II to this notice in their case briefs.

Public Comment

Interested parties may submit case briefs to Commerce no later than 14 days after the date of publication of this notice in the **Federal Register**.[11] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[12] Interested parties who submit case briefs or rebuttal briefs in these proceedings must submit: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[13] Case and rebuttal briefs should be filed using ACCESS.

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this circumvention inquiry, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[14] Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain: (1) the requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party that will attend the hearing and whether any of those individuals is a foreign national; and (3) a list of the issues that the party intends to discuss at the hearing. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

U.S. International Trade Commission Notification

Consistent with section 781(e) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of this preliminary determination to

[10] *See Order.*

[11] Commerce is exercising its discretion, under 19 CFR 351.309(C)(1)(ii), to alter the time limit for filing case briefs.

[12] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

[13] *See* 19 CFR 351.309(c)(2) and (d)(2).

[14] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[15] *See APO and Service Procedures.*

include the merchandise subject to this circumvention inquiry within the *Order.* Pursuant to section 781(e) of the Act, the ITC may request consultations concerning Commerce's proposed inclusion of the inquiry merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, it will have 60 days from the date of notification by Commerce to provide written advice.

Notification to Interested Parties

Commerce is issuing and publishing this determination in accordance with sections 781(a) of the Act and 19 CFR 351.226(g)(1).

Dated: April 4, 2024.

Ryan Majerus,

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

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

Appendix II

Importer Certification

I hereby certify that:

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

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

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

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

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

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

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

E. Select the appropriate statement below:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[FR Doc. 2024–07683 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Davis-Bacon and Related Act Compliance Information Collection Request (ICR)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 10, 2024.

ADDRESSES: Interested persons are invited to submit written comments by mail to Liz Reinhart, Management Analyst, National Institute of Standards and Technology, *PRAcomments@doc.gov*). Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Cierra Bean, Business Operations Specialist, CHIPS Program Office, *askchips@chips.gov,* (202) 815–2677.

SUPPLEMENTARY INFORMATION:

I. Abstract

The CHIPS Incentives Program is authorized by Title XCIX—Creating Helpful Incentives to Produce Semiconductors for America of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283, referred to as the CHIPS Act or Act), as amended by the CHIPS Act of 2022 (Division A of Pub. L. 117–167). The CHIPS Incentives Program is administered by the CHIPS Program Office (CPO) within the National Institute of Standards and Technology (NIST) of the United States Department of Commerce (Department).

All Federal agencies administering programs subject to Davis-Bacon wage provisions are required by CFR part 5, section 5.7 (b) to submit a report of all new covered contracts/projects and all compliance and enforcement activities every six months to the Department of Labor (DOL). In order for CPO to comply with this reporting requirement, it must collect contract and enforcement information from CHIPS and Science Act Incentives Program awardees, the Department's direct contractors, and other prime contractors that administer the Department's programs subject to Davis-Bacon requirements. The Department will require that such entities complete and submit a Semi-Annual Enforcement Report every six months, by the 21st of April and the 21st of October each year.

II. Method of Collection

Submit semi-annual report to the Department 20 days after the end of semi-annual reporting period by April 20th and October 20th for applicable performance period. The CHIPS Semi-Annual Enforcement Report is due to DOL by April 30 and October 31 of each year. The April 30 report is for the reporting period from October 1 through March 31 of each year, and the October 31 report is for the reporting period from April 1 through September 30 of each year. The Department asks for the information by the 20th of the month in which it is due (*i.e.,* April 20th and October 20th), so that all reports can be combined, and a final report compiled for submission to DOL. The Department's form number is OMB 0693–XXXX.

III. Data

OMB Control Number: 0693–XXXX.
Form Number(s): None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 100 respondents annually.
Estimated Time per Response: 2 hours per response.
Estimated Total Annual Burden Hours: 200 hours.
Estimated Total Annual Cost to Public: $18,928.
Respondent's Obligation: Mandatory.
Legal Authority: Statutory Authority: 29 CFR 5.7(b).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–07656 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD850]

Fisheries of the U.S. Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 84 Assessment Webinar I for U.S Caribbean Yellowtail Snapper and Stoplight Parrotfish.

SUMMARY: The SEDAR 84 assessment process of U.S. Caribbean yellowtail snapper and stoplight parrotfish will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 84 assessment webinar I will be held April 30, 2024, from 1 p.m. to 3 p.m., Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested

in participating should contact Julie A. Neer at SEDAR (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.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment webinar I are as follows:

Panelists will review and discuss initial assessment modeling to date.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice 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 intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 8, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–07728 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD816]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Chevron Long Wharf Maintenance and Efficiency Project in San Francisco Bay, California

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from Chevron Products Company (Chevron) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to the Long Wharf Maintenance and Efficiency Project (LWMEP) in San Francisco Bay, California. Chevron's activities will not be completed prior to the IHA's expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than April 26, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.clevenstine@noaa.gov.* Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), 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 below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word, Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Alyssa Clevenstine, Office of Protected Resources, NMFS, (301) 427–8401.

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 promulgated or, if the taking is limited

to harassment, an incidental harassment authorization is issued.

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 such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in the MMPA and the NMFS's implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA (88 FR 19247, March 31, 2023), NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal of an IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires, and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA);

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NAO 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 determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On May 12, 2023, NMFS issued an IHA to Chevron to take marine mammals incidental to the LWMEP in San Francisco Bay, California (88 FR 31703, May 18, 2023), effective from June 1, 2023, through May 31, 2024. On February 23, 2024, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. That report and other supporting materials can be found on the project website: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-chevron-products-company-long-wharf-maintenance-and-efficiency.*

Description of the Specified Activities and Anticipated Impacts

The Chevron LWMEP consists of construction activities to upgrade Berth 1 of the Refinery Long Wharf in San Francisco Bay, California, in order to meet current safety and efficiency standards. Chevron's planned construction at Berth 1 included: vibratory extraction of two 18-inch concrete piles associated with an existing gangway and catwalk; impact installation of 42 24-inch square concrete piles to construct a mooring dolphin and hook, breasting dolphin and breasting points with standoff fenders, and to replace the catwalk in a different location; vibratory installation of a temporary construction template composed of up to 12 36-inch steel piles; and vibratory extraction of the same temporary steel piles when in-

water construction activities were complete. All in-water work was expected to be completed in a seasonal work window from June 1 through November 30, 2023.

Due to unexpected difficulty with pile installation, Chevron was only able to complete vibratory extraction and impact installation of concrete piles, and vibratory installation of temporary steel piles. The applicant initially determined 12 36-inch steel piles would be needed to support the template; however, only 10 steel piles were needed and installed via vibratory hammer. Chevron plans to complete the remaining construction activities, which includes vibratory extraction of the 10 steel piles, in up to 8 non-consecutive days during 1 month during June 1 through November 30, 2024. This renewal request is to cover the subset of activities in the initial IHA that will not be completed during the effective IHA period.

The initial IHA was intended to cover 1 year of a larger project for which Chevron obtained prior IHAs and intends to request take authorization for subsequent facets of the project. The larger 5-year project involves upgrading Long Wharf to satisfy current Marine Oil Terminal Engineering and Maintenance Standards. The Long Wharf has 6 berths for receiving raw materials and shipping products. The project area encompasses the entirety of Berth 1, an area of approximately 470 square meters (m^2).

Chevron's proposed activity includes vibratory pile removal, which may result in the incidental take of marine mammals, by harassment only. Due to mitigation measures, no Level A harassment is anticipated to occur, and none is proposed for authorization. The likely or possible impacts of the Chevron's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors and is unchanged from the impacts described in **Federal Register** notices for the initial IHA (88 FR 19247, March 31, 2023; 88 FR 31703, May 18, 2023). Potential non-acoustic stressors could result from the physical presence of the equipment, vessels, and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Sounds resulting from pile extraction may result in the incidental take of marine mammals, by Level B harassment only, in the form of behavioral harassment.

Detailed Description of the Activity

A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization (88 FR 19247, March 31, 2023; 88 FR 31703, May 18, 2023). As previously mentioned, this request is for a subset of the activities considered for the initial IHA that would not be completed prior to its expiration. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notice for the initial IHA. The proposed renewal IHA would be effective from June 1, 2024, through March 31, 2025.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial authorization (88 FR 19247, March 31, 2023). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events (UMEs), and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the description of the marine mammals in the area of specified activities contained in the supporting documents for the initial IHA (88 FR 31703, May 18, 2023).

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which an authorization of incidental take is proposed here may be found in the notice of the proposed IHA for the initial authorization (88 FR 19247, March 31, 2023). NMFS has reviewed the monitoring data from the initial IHA, recent draft SARs, information on relevant UMEs, and other scientific literature, and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization (88 FR 19247, March 31, 2023; 88 FR 31703, May 18, 2023). Specifically, the area or space within which harassment is likely to occur and marine mammal occurrence data applicable to this authorization remain unchanged from the initial IHA. Similarly, methods of take, daily take estimates and types of take remain unchanged from the initial IHA, with the exception of California sea lion and gray whale. The number of takes proposed for authorization in this renewal are a subset of the initial authorized takes that better represent the amount of activity left to complete. These takes, which reflect the lower number of remaining days of work, are indicated below in table 1. Takes are calculated using the same methodology as the initial IHA, and are just a proportion of the initial takes based on up to 8 days of work remaining.

For California sea lions, a maximum of four individuals have been seen in a single day based on previous monitoring reports. To account for this possibility, Chevron estimated 2 days of four individuals entering the project area and one individual for the remaining 6 days of work. Therefore, Chevron requested, and NMFS proposes to authorize, 14 takes of California sea lions by Level B harassment.

The initial IHA authorized 2 takes by Level B harassment of gray whale. No gray whale takes have occurred, and given the already very low number of takes previously authorized (2 animals), NMFS proposes to authorize 2 takes of gray whale in this renewal IHA, rather than a proportion of the initial takes.

Based upon prior occurrences in the Bay, Chevron conservatively estimated, and NMFS concurred, that a maximum of 10 northern fur seals could occur in the project area during the 30 day in-water construction activity period for the initial IHA. Since only 8 days of in-water work are proposed for this renewal IHA, NMFS proposes to authorize 3 takes of northern fur seals by Level B harassment.

TABLE 1—ESTIMATED TAKE BY LEVEL B HARASSMENT PROPOSED FOR AUTHORIZATION AND ESTIMATED TAKE AS A PERCENTAGE OF THE POPULATION

Species	Expected occurrence	Total estimated take	Estimated take as a percentage of population
Harbor seal	237 seals per day	1,896	<7
California sea lion *	14 over project duration	14	<1
Harbor porpoise	1 porpoise per day	8	<1
Bottlenose dolphin	Up to 8 dolphins once per month	8	<2
Gray whale **	2 whales over project duration	2	<1
Northern elephant seal	1 seal every 3 days	3	<1
Northern fur seal ***	3 seals over project duration	3	<1

* Takes of California sea lion are calculated to account for up to 2 days with a maximum of four individuals per day, based on previous observations, and 6 days of one individual per day.

** The initial IHA authorized 2 takes by Level B harassment of gray whale. No gray whale takes have occurred, and given the already very low number of takes previously authorized (2 animals), NMFS proposes to authorize 2 takes of gray whale in this renewal IHA, rather than a proportion of the initial takes.

*** Takes of northern fur seal are calculated using the same proportions as the initial IHA, which is based on a maximum of 10 individuals per 30 days.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA (88 FR 31703, May 18, 2023), and the discussion of the least practicable adverse impact included in that document remains accurate. Only vibratory pile extraction is proposed for the renewal IHA, so only a subset of mitigation requirements are included as several others (*e.g.,* soft-start procedures, bubble curtain) are specific to impact pile installation and, therefore, unnecessary for the specified activities proposed here.

The following mitigation, monitoring, and reporting measures are proposed for this renewal, Chevron will:

- Employ at least two protected species observers (PSOs) to monitor the full shutdown zones, the Level B harassment zones to the extent practicable, and implement pre- and post-clearance monitoring;
- Implement a minimum shutdown zone of 10 meters for in-water construction activities;
- Shut down if marine mammals come within the designated hearing group-specific shutdown zones;
- Shut down if any species for which take has not been authorized enters the Level B harassment zone;
- Submit a draft monitoring report to NMFS within 90 days of completion of marine mammal monitoring or 60 days prior to issuance of any subsequent IHA for this project, whichever comes first;
- Prepare and submit a final report within thirty days following resolution of comments on the draft report from NMFS;
- Submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above); and
- Report injured or dead marine mammals.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (88 FR 19247, March 31, 2023) and solicited public comments on both our proposal to issue the initial IHA for construction activities associated with LWMEP and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, NMFS received no comments on either the proposal to issue the initial IHA or the potential for a renewal IHA.

Preliminary Determinations

The proposed renewal request consists of a subset of activities analyzed through the initial authorization described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that Chevron's activities would have a negligible impact on the affected species or stock and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has preliminarily determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Chevron's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this proposed action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to Chevron for conducting pile extraction activities in San Francisco Bay from June 1, 2024, through May 31, 2025, provided the

previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: April 8, 2024.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD851]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to Shell Offshore Inc. (Shell) for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from July 1, 2024 through June 30, 2025.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce 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 authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 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.

Except with respect to certain activities not pertinent here, 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).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in U.S. waters of the Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322, January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

Shell plans to conduct a 4D ocean bottom node (OBN) survey in the Mississippi Canyon 941 and portions of the surrounding 80 lease blocks; Vito Development, with approximate water depths ranging from 1,500 to 3,000 meters (m). See Section F of the LOA application for a map of the area. Shell anticipates using a single source vessel, towing a conventional airgun array source consisting of 32 elements, with a total volume of 5,110 cubic inches (in^3). Please see Shell's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by Shell in its LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in the preamble (86 FR 5398, January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

No OBN surveys were included in the modeled survey types, and use of existing proxies (*i.e.,* 2D, 3D NAZ, 3D WAZ, Coil) is generally conservative for

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December–March) and Summer (April–November).

use in evaluation of 3D OBN survey effort, largely due to the greater area covered by the modeled proxies. Summary descriptions of these modeled survey geometries are available in the preamble to the proposed rule (83 FR 29212, 29220, June 22, 2018). Coil was selected as the best available proxy survey type because the spatial coverage of the planned survey is most similar to that associated with the coil survey pattern. The planned OBN survey will involve one source vessel sailing along closely spaced survey lines approximately 20 km in length. The coil survey pattern in the model was assumed to cover approximately 144 kilometers squared (km^2) per day (compared with approximately 795 km^2, 199 km^2, and 845 km^2 per day for the 2D, 3D NAZ, and 3D WAZ survey patterns, respectively). Among the different parameters of the modeled survey patterns (*e.g.,* area covered, line spacing, number of sources, shot interval, total simulated pulses), NMFS considers area covered per day to be most influential on daily modeled exposures exceeding Level B harassment criteria. Although Shell is not proposing to perform a survey using the coil geometry, its planned OBN survey is expected to cover approximately 15.7 km^2 per day, meaning that the coil proxy is most representative of the effort planned by Shell in terms of predicted Level B harassment exposures.

In addition, all available acoustic exposure modeling results assume use of a 72-element, 8,000 in^3 array. Thus, take numbers authorized through the LOA are considered conservative due to differences in both the airgun array (32 elements, 5,110 in^3) and the daily survey area planned by Shell (15.7 km^2), as compared to those modeled for the rule.

The survey is planned to occur for approximately 90 days in Zone 5, with airguns being used on 60 of the days. The seasonal distribution of survey days is not known in advance. Therefore, the take estimates for each species are based on the season that has the greater value for the species (*i.e.,* winter or summer).

For some species, take estimates based solely on the modeling yielded results that are not realistically likely to occur when considered in light of other relevant information available during the rulemaking process regarding marine mammal occurrence in the GOM. The approach used in the acoustic exposure modeling, in which seven modeling zones were defined over the U.S. GOM, necessarily averages fine-scale information about marine mammal distribution over the large area of each modeling zone. Thus, although the modeling conducted for the rule is a natural starting point for estimating take, the rule acknowledged that other information could be considered (see, *e.g.,* 86 FR 5442, January 19, 2021), discussing the need to provide flexibility and make efficient use of previous public and agency review of other information and identifying that additional public review is not necessary unless the model or inputs used differ substantively from those that were previously reviewed by NMFS and the public). For this survey, NMFS has other relevant information reviewed during the rulemaking that indicates use of the acoustic exposure modeling to generate a take estimate for certain marine mammal species produces results inconsistent with what is known regarding their occurrence in the GOM. Accordingly, we have adjusted the calculated take estimates for those species as described below.

NMFS' final rule described a ''core habitat area'' for Rice's whales (formerly known as GOM Bryde's whales) [3] located in the northeastern GOM in waters between 100 and 400 m depth along the continental shelf break (Rosel *et al.,* 2016). However, whaling records suggest that Rice's whales historically had a broader distribution within similar habitat parameters throughout the GOM (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). In addition, habitat-based density modeling has identified similar habitat (*i.e.,* approximately 100 to 400 m water depths along the continental shelf break) as being potential Rice's whale habitat (Roberts *et al.,* 2016; Garrison *et al.,* 2023), and Rice's whales have been detected within this depth band throughout the GOM (Soldevilla *et al.,* 2022, 2024). See discussion provided at, *e.g.,* 83 FR 29228, June 22, 2018; 83 FR 29280, June 22, 2018; 86 FR 5418, January 19, 2021.

Although Rice's whales may occur outside of the core habitat area, we expect that any such occurrence would be limited to the narrow band of suitable habitat described above (*i.e.,* 100–400 m) and that, based on the few available records, these occurrences would be rare. Shell's planned activities will occur in water depths of approximately 1,500 to 3,000 m in the central GOM. Thus, NMFS does not expect there to be the reasonable potential for take of Rice's whale in association with this survey and, accordingly, does not authorize take of Rice's whale through the LOA.

Killer whales are the most rarely encountered species in the GOM, typically in deep waters of the central GOM (Roberts *et al.,* 2015; Maze-Foley and Mullin, 2006). As discussed in the final rule, the density models produced by Roberts *et al.* (2016) represent the output of models derived from multi-year observations and associated environmental parameters that incorporate corrections for detection bias. However, in the case of killer whales, the model is informed by few data, as indicated by the coefficient of variation associated with the abundance predicted by the model (0.41, the second-highest of any GOM species model; Roberts *et al.,* 2016). The model's authors noted the expected non-uniform distribution of this rarely-encountered species (as discussed above) and expressed that, due to the limited data available to inform the model, it ''should be viewed cautiously'' (Roberts *et al.,* 2015).

NOAA surveys in the GOM from 1992 to 2009 reported only 16 sightings of killer whales, with an additional 3 encounters during more recent survey effort from 2017 to 2018 (Waring *et al.,* 2013; *https://www.boem.gov/gommapps*). Two other species were also observed on fewer than 20 occasions during the 1992 to 2009 NOAA surveys (Fraser's dolphin and false killer whale).[4] However, observational data collected by protected species observers (PSO) on industry geophysical survey vessels from 2002 to 2015 distinguish the killer whale in terms of rarity. During this period, killer whales were encountered on only 10 occasions, whereas the next most rarely encountered species (Fraser's dolphin) was recorded on 69 occasions (Barkaszi and Kelly, 2019). The false killer whale and pygmy killer whale were the next most rarely encountered species, with 110 records each. The killer whale was the species with the lowest detection frequency during each period over which PSO data were synthesized (2002 to 2008 and 2009 to 2015). This information qualitatively informed our rulemaking process, as discussed at 86 FR 5322 and 86 FR 5334 (January 19, 2021), and similarly informs our analysis here.

The rarity of encounter during seismic surveys is not likely to be the product of high bias on the probability of detection. Unlike certain cryptic species with high detection bias, such as *Kogia*

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] However, note that these species have been observed over a greater range of water depths in the GOM than have killer whales.

spp. or beaked whales, or deep-diving species with high availability bias, such as beaked whales or sperm whales, killer whales are typically available for detection when present and are easily observed. Roberts *et al.* (2015) stated that availability is not a major factor affecting detectability of killer whales from shipboard surveys, as they are not a particularly long-diving species. Baird *et al.* (2005) reported that mean dive durations for 41 fish-eating killer whales for dives greater than or equal to 1 minute in duration was 2.3–2.4 minutes, and Hooker *et al.* (2012) reported that killer whales spent 78 percent of their time at depths between 0–10 m. Similarly, Kvadsheim *et al.* (2012) reported data from a study of 4 killer whales, noting that the whales performed 20 times as many dives 1–30 m in depth than to deeper waters, with an average depth during those most common dives of approximately 3 m.

In summary, killer whales are the most rarely encountered species in the GOM and typically occur only in particularly deep water (>700 m). This survey would take place in deep waters that would overlap with depths in which killer whales typically occur. While this information is reflected through the density model informing the acoustic exposure modeling results, there is relatively high uncertainty associated with the model for this species, and the acoustic exposure modeling applies mean distribution data over areas where the species is in fact less likely to occur. NMFS' determination in reflection of the data discussed above, which informed the final rule, is that use of the generic acoustic exposure modeling results for killer whales will generally result in estimated take numbers that are inconsistent with the assumptions made in the rule regarding expected killer whale take (86 FR 5403, January 19, 2021).

In past authorizations, NMFS has often addressed situations involving the low likelihood of encountering a rare species such as killer whales in the GOM through authorization of take of a single group of average size (*i.e.,* representing a single potential encounter). See 83 FR 63268, December 7, 2018. See also 86 FR 29090, May 28, 2021 and 85 FR 55645, September 9, 2020. For the reasons expressed above, NMFS determined that a single encounter of killer whales is more likely than the model-generated estimates and has authorized take associated with a single group encounter (*i.e.,* up to 7 animals).

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See table 1 in this notice and table 9 of the rule (86 FR 5322, January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5438, January 19, 2021).

The take numbers for authorization are determined as described above in the Summary of Request and Analysis section. Subsequently, the total incidents of harassment for each species are multiplied by scalar ratios to produce a derived product that better reflects the number of individuals likely to be taken within a survey (as compared to the total number of instances of take), accounting for the likelihood that some individual marine mammals may be taken on more than one day (see 86 FR 5404, January 19, 2021). The output of this scaling, where appropriate, is incorporated into adjusted total take estimates that are the basis for NMFS' small numbers determinations, as depicted in table 1.

This product is used by NMFS in making the necessary small numbers determinations through comparison with the best available abundance estimates (see discussion at 86 FR 5391, January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *http://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	n/a	51	n/a
Sperm whale	1,578	668	2,207	30.2
Kogia spp	[4] 596	181	4,373	4.9
Beaked whales	6,966	704	3,768	18.7
Rough-toothed dolphin	1,198	344	4,853	7.1
Bottlenose dolphin	5,675	1,629	176,108	0.9
Clymene dolphin	3,370	967	11,895	8.1
Atlantic spotted dolphin	2,267	651	74,785	0.9
Pantropical spotted dolphin	15,293	4,389	102,361	4.3
Spinner dolphin	4,098	1,176	25,114	4.7
Striped dolphin	1,316	378	5,229	7.2
Fraser's dolphin	378	109	1,665	6.5
Risso's dolphin	990	292	3,764	7.8
Melon-headed whale	2,214	653	7,003	9.3
Pygmy killer whale	521	154	2,126	7.2
False killer whale	829	245	3,204	7.6
Killer whale	7	n/a	267	2.6

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take	Scaled take [1]	Abundance [2]	Percent abundance
Short-finned pilot whale	640	189	1,981	9.5

[1] Scalar ratios were applied to ''Authorized Take'' values as described at 86 FR 5322, 5404 (January 19, 2021) to derive scaled take numbers shown here.

[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For Rice's whale and killer whale, the larger estimated SAR abundance estimate is used.

[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[4] Includes 32 takes by Level A harassment and 564 takes by Level B harassment. Scalar ratio is applied to takes by Level B harassment only; small numbers determination made on basis of scaled Level B harassment take plus authorized Level A harassment take.

Based on the analysis contained herein of Shell's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to Shell authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: April 8, 2024.

Catherine Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–07698 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD681]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to U.S. Navy Maintenance and Pile Replacement Project in Puget Sound, Washington

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

ACTION: Notice; proposed incidental harassment authorizations; request for comments on proposed authorizations and possible renewal.

SUMMARY: NMFS has received a request from the United States Navy (Navy) for authorization to take marine mammals incidental to 2 years of construction activities associated with the Naval Facilities Engineering Command Northwest (NAVFAC NW) Maintenance and Pile Replacement (MPR) project in Puget Sound, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two consecutive 1-year incidental harassment authorizations (IHAs) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 13, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, NMFS and should be submitted via email to *ITP.Fleming@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as

''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of two consecutive IHAs) 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 NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHAs qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the request for two consecutive IHAs.

Summary of Request

On October 5, 2023, NMFS received a request from the Navy for two consecutive 1-year IHAs to take marine mammals incidental to construction associated with the Navy's NAVFAC NW MPR project in Puget Sound, Washington. Following NMFS' review of the application, the Navy submitted a revised version on December 14, 2023, additional information on January 10, 2024, and the marine mammal monitoring plan on January 23, 2024. Final revisions to both the application and the marine mammal monitoring plan were provided on March 2, 2024. The application was deemed adequate and complete on February 27, 2024. The Navy's request is for take of 10 species of marine mammals by Level B harassment and, for harbor seal, Level B and Level A harassment. Neither the Navy nor NMFS expect serious injury or mortality to result from this activity. Therefore, IHAs are appropriate.

NMFS previously issued a regulation and associated Letters of Authorization to the Navy for related work (84 FR 15963, April 17, 2019; *https://www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-marine-structure-maintenance-and-pile-replacement-wa*). The Navy complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous LOAs, and information regarding their monitoring results may be found in the Effects of Specified Activities on Marine Mammals and Their Habitat.

Description of Proposed Activity

Overview

Maintaining existing wharfs and piers is vital to sustaining the Navy's mission and ensuring readiness. To ensure continuance of necessary missions at the four installations, the Navy must conduct annual maintenance and repair activities at existing marine waterfront structures, including removal and replacement of piles of various types and sizes. The Navy refers to this program as the Marine Structure MPR program.

The activities that have the potential to take marine mammals by Level A harassment and Level B harassment include installation and/or removal of timber, concrete, and steel piles by vibratory and impact pile driving and down-the hole (DTH) drilling. Construction would span the course of 2 years, with the first year beginning on July 15, 2024, and lasting through July 14, 2025. The second year of construction activities would begin July 15, 2025, and continue through July 14, 2026.

The Navy has requested the issuance of two consecutive IHAs in association with the two project years. Given the similarities in activities between project years, NMFS is issuing this single **Federal Register** notice to solicit public comments on the issuance of the two similar, but separate, IHAs.

Dates and Duration

The Navy anticipates that the planned NAVFAC NW MPR activities will occur over 2 years. The year 1 IHA would be valid from July 1, 2024–June 30, 2025, and the year 2 would span July 1, 2025–June 30, 2026. The specified activities would occur at any time during each project year, subject to existing time of year restrictions, or in-water work windows, designed to protect fish species listed under the U.S. Endangered Species Act (ESA). For Naval Base Kitsap (NBK) Bangor (located in Hood Canal), in-water work would occur from July 16 through January 15 each project year. At the remaining three facilities (located in Puget Sound), in-water work would occur from July 16 through February 15.

Days of pile driving at each site were based on the estimated work days using a slow production rate (*e.g.,* four–six piles per day for fender pile replacement). These conservative rates are the basis for estimates of total days at each facility each year (table 1, table 2). These totals include both extraction and installation of piles and represent a conservative estimate of pile driving days at each facility. In a real construction situation, pile driving production rates would be maximized when possible and actual daily production rates may be higher, resulting in fewer actual pile driving days.

Specific Geographic Region

The four installations are located within the inland waters of Washington State. One facility is located within Hood Canal, while the remainder are located within Puget Sound. See figure 1–1 of the Navy's application for a regional map and section 2 for full details regarding the specified geographical region. Puget Sound is one of the largest estuaries in the United States and is a place of great physical and ecological complexity and productivity. With nearly six million people (doubled since the 1960s), Puget Sound is also heavily influenced by human activity.

NBK Bangor serves as the Pacific homeport for the Navy's TRIDENT submarine squadron and other ships home-ported or moored at the installation and to maintain and operate administrative and personnel support facilities including security, berthing, messing, and recreational services. It is located on Hood Canal, a long, narrow, fjord-like basin of western Puget Sound (see figure 1–2 of the Navy's application). Oriented northeast to southwest, the portion of the canal from Admiralty Inlet to a large bend, called the Great Bend, at Skokomish, Washington, is 84 kilometers (km) (52 miles (mi)) long. East of the Great Bend, the canal extends an additional 24 km (15 mi) to Belfair. Throughout its 108-km (67 mi) length, the width of the canal varies from 1.6 to 3.2 km (1 to 2 mi) and exhibits strong depth/elevation gradients. Hood Canal is characterized by relatively steep sides and irregular seafloor topography. In northern Hood Canal, water depths in the center of the waterway near Admiralty Inlet vary between 91 and 128 meters (m) (300 and 420 feet (ft)). As the canal extends southwestward toward the Olympic Mountain Range and Thorndyke Bay, water depth decreases to approximately 49 m (160 ft) over a moraine deposit. This deposit forms a sill across the canal

in the vicinity of Thorndyke Bay, which limits seawater exchange with the rest of Puget Sound. The NBK Bangor waterfront occupies approximately 8 km (5 mi) of the shoreline within northern Hood Canal (1.7 percent of the entire Hood Canal coastline) and lies just south of the sill feature.

NBK Bremerton serves as the homeport for a nuclear aircraft carrier and other Navy vessels. It is located on the north side of Sinclair Inlet in southern Puget Sound (see figure 1–3 of the Navy's application). Sinclair Inlet is located off the main basin of Puget Sound and is about 6.9 km long and 1.9 km wide. The inlet is connected to the main basin through Port Orchard Narrows and Rich Passage. Another relatively narrow waterway, Port Washington Narrows, connects Sinclair Inlet to Dyes Inlet. In-water structures, shoreline fill, and erosion protection at NBK Bremerton have resulted in a shoreline geometry and character that is quite different from undisturbed shorelines in Puget Sound. Bathymetry near existing piers and in turning basins immediately offshore has been altered by significant dredging to accommodate aircraft carriers and other Navy vessels. Water depths range from 12 to 14 m (40 to 45 ft), increasing to 14 to 15 m (45 to 50 ft) in dredged berthing areas. West of the project sites, further into Sinclair Inlet, depths gradually decrease to less than 9 m (30 ft).

NBK Manchester provides bulk fuel and lubricant support to area Navy afloat and shore activities. It is located on Orchard Point, approximately 6.4 km (4 mi) due east of Bremerton. Please see figure 1–4 of the Navy's application. The installation is bounded by Clam Bay to the northwest, Rich Passage to the northeast, and Puget Sound to the east. NBK Manchester piers are located on the north side of Orchard Point and in a small embayment open on the south side of Orchard Point. In Clam Bay, the bathymetry is gently sloping with depths in the outer portions of the bay of approximately 5.5 m (18 ft) below mean lower low water (MLLW). Depths off Orchard Point drop off dramatically to 18 m (60 ft) below MLLW approximately 150 m (500 ft) from shore and 90 m (300 ft) below MLLW 1.6 km (1 m) offshore. Rich Passage is a shallow sill, less than 21 m (70 ft) deep.

Naval Station (NS) Everett provides homeport ship berthing, industrial support, and a Navy administrative center. It is located in Port Gardner Bay in Puget Sound's Whidbey Basin (see figure 1–5 of the Navy's application). To the west of the installation is the channelized mouth of the Snohomish River bounded by Jetty Island, which is composed of sediment from maintenance dredging and acts as a breakwater for the northwest area along the installation's waterfront. Jetty Island separates Port Gardner Bay and Possession Sound from the Snohomish River channel. The mouth of the Snohomish River channel is a historically industrialized area of highly modified shorelines and dredged waterways that forms a protected harbor within Port Gardner Bay. East of Jetty Island lies the Snohomish River estuary, consisting of a series of interconnected sloughs that flow through the lowlands east and north of the river's main channel. Water depths in Possession Sound range from about 9 m (30 ft) near the industrialized shoreline in Port Gardner to 180 m (600 ft) in mid-channel.

Detailed Description of the Specified Activity

The Navy plans to conduct maintenance and repair activities at marine waterfront structures at the four aforementioned installations within Puget Sound (Washington inland waters) and Hood Canal. Repairs would include replacing up to 150 structurally unsound piles with 164 concrete or steel piles over a 1-year period (July 2024 through July 2025) at NBK Bremerton and NBK Manchester using impact and vibratory pile driving and removal and DTH drilling; and replacing 130 structurally unsound piles over a 1-year period (July 2025–July 2026) at NBK Bremerton, NBK Bangor and NS Everett using impact and vibratory pile driving and removal.

Tables 1 and 2 provide a summary of pile types, sizes, and maximum numbers of piles at each installation to be replaced over the two 1-year MPR Program periods from July 2024–July 2025 and July 2025–July 2026, respectively. This estimate assumes all piles would be removed and replaced with new piles. However, existing piles may be repaired in place with no new piles installed and if replaced piles are larger than existing piles, typically fewer piles are needed. Therefore, estimates of replaced piles for each installation are a conservative overestimate. These estimates also include temporary (or ''false work'') piles that may be required during construction. Actual numbers will depend on the number actually replaced and the size and type of new piles installed.

The MPR program includes pile repair, extraction, and installation, all of which may be accomplished through a variety of methods. However, only pile extraction and installation using vibratory and impact pile drivers and DTH drilling are expected to have the potential to result in incidental take of marine mammals. Pile repair methods include stubbing, wrapping, pile encapsulation, welding, or coating. These processes do not involve pile driving and are not expected to have the potential to result in incidental take of marine mammals. Pile removal may be accomplished via vibratory extraction or via mechanical methods such as cutting/chipping, clamshell removal, or direct pull. Four primary methods of pile installation would be used: water jetting, vibratory pile driving, impact pile driving, or DTH drilling. Noise levels produced through mechanical extraction activities and water jetting are not expected to exceed baseline levels produced by other routine activities and operations at the four facilities, and any elevated noise levels produced through these activities are expected to be intermittent, of short duration, and with low peak values. Therefore, only impact and vibratory pile driving, vibratory removal, and DTH drilling are carried forward for further analysis.

Vibratory hammers, which can be used to either install or extract a pile, contain a system of counter-rotating eccentric weights powered by hydraulic motors, and are designed in such a way that horizontal vibrations cancel out, while vertical vibrations are transmitted into the pile. The pile driving machine is lifted and positioned over the pile by means of an excavator or crane, and is fastened to the pile by a clamp and/or bolts. The vibrations produced cause liquefaction of the substrate surrounding the pile, enabling the pile to be extracted or driven into the ground using the weight of the pile plus the hammer. Impact hammers use a rising and falling piston to repeatedly strike a pile and drive it into the ground. DTH drilling is a common method used to drill holes through hard rock substrates. DTH drilling uses rotary cutting percussion action using a button bit. In DTH drilling, the drill pipe transmits the necessary feed force and rotation to the hammer and bit, along with the compressed air used to actuate the hammer and flush the cuttings.

TABLE 1—PILE TYPES AND MAXIMUM ANTICIPATED NUMBER TO BE REPLACED AT EACH INSTALLATION BETWEEN JULY 2024 AND JULY 2025

Pile size/type	Method	Number of piles	Estimated piles per day	Days of installation or removal
NBK Bremerton (Pier C and Pier 5)				
13-inch Timber	Removal, Vibratory or Pull	78	6 (up to 10)	30
24-in Concrete Octagonal	Installation, Impact	25	4.	
18-in x 18-inch square concrete	Installation, Impact	65	5.	
NBK Manchester (Fuel Pier)				
26-in Steel	Removal, Pull or Cut	72	N/A	37
24-in Concrete	Installation, DTH or impact	74	1–2.	

TABLE 2—PILE TYPES AND MAXIMUM ANTICIPATED NUMBER TO BE REPLACED AT EACH INSTALLATION BETWEEN JULY 2025 AND JULY 2026

Pile size/type	Method	Number of piles	Estimated piles per day	Days of installation or removal
NBK Bangor Marginal Wharf				
36-inch Steel	Removal, Vibratory or Pull	78	4	36
	Installation, Vibratory or Impact	78	4	
NBK Bremerton (Pier F)				
24-in Steel	Removal, Vibratory	48	1–6	24
	Installation, Vibratory	48		
NS Everett (Pier A)				
12-in Steel	Removal, Vibratory or Cut	4	1–2	8
	Installation, Vibratory or Impact	4	1–2	

Between July 2024 and July 2025, the following activities are planned: (1) At NBK Bremerton, 25 13-inch (in) timber fender piles would be removed at Pier C using vibratory pile driving or pulling and replaced with 25 24-in concrete fender piles using impact pile driving. At the same installation, 53 13-in timber piles would be vibratory removed at Pier 5 and replaced with up to 65 18-in concrete piles using impact pile driving. Impact pile driving at Pier 5 may occur at the same time as vibratory pile driving at Pier C, though Pier 5 is shielded from Pier C pile driving sound by Dry Dock 6, which is a solid structure extending into Sinclair Inlet; and (2) At NBK Manchester a total of 72 26-in steel piles would be removed and replaced with 74 24-in concrete piles at the Fuel Pier. Concrete piles would be installed using DTH drilling in areas with bedrock while impact pile driving would be used if there is no bedrock.

Between July 2025 and July 2026, the following activities are planned: (1) Up to 78 steel fender piles (36-in) at NBK Bangor are anticipated to be removed by vibratory pile driving or cutting, and 78 steel fender piles (36-in) could be installed using vibratory pile driving with impact proofing at this same location; (2) A total of 48 24-in steel fender piles would be removed and replaced with 48 new 24-in steel fender piles using vibratory pile driving at NBK Bremerton, Pier F; and (3) At NS Everett a total of 4 12-in steel piles will be removed by vibratory pile driving or cutting and replaced with 4 12-in steel piles by vibratory or impact pile driving if necessary at Pier A.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' 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' website (*https://www.fisheries.noaa.gov/find-species*).

Table 3 lists all species or stocks for which take is expected and proposed to be authorized for both proposed IHAs, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the

status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Alaska and Pacific SARs. All values presented in table 3 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 3—MARINE MAMMAL SPECIES[4] LIKELY TO BE AFFECTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
Order Artiodactyla—Cetacea—Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray Whale	*Eschrichtius robustus*	Eastern N Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	131
Family Balaenopteridae (rorquals):						
Humpback Whale	*Megaptera novaeangliae*	Central America/Southern Mexico—CA/OR/WA.	E, D, Y	1,494 (0.171, 1,284, 2021).	3.5	14.9
		Mainland Mexico—CA/OR/WA	T, D, Y	3,477 (0.101, 3,185, 2018).	43	22
		Hawai'i	-, -, N	11,278 (0.56, 7,265, 2020).	127	27.09
Minke Whale	*Balaenoptera acutorostrata*	CA/OR/WA	-, -, N	915 (0.792, 509, 2018)	4.1	0.19
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer Whale	*Orcinus orca*	Eastern North Pacific Southern Resident.	E, D, Y	73 (N/A, 73, 2022)	0.13	0
		West Coast Transient	-, -, N	349[5] (N/A, 349, 2018)	3.5	0.4
Family Phocoenidae (porpoises):						
Dall's Porpoise	*Phocoenoides dalli*	CA/OR/WA	-, -, N	16,498 (0.61, 10,286, 2018).	99	≥0.66
Harbor Porpoise	*Phocoena phocoena*	Washington Inland Waters	-, -, N	11,233 (0.37, 8,308, 2015).	66	≥7.2
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
CA Sea Lion	*Zalophus californianus*	U.S	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-, -, N	36,308[6] (N/A, 36,308, 2022).	2,178	93.2
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Washington Inland Hood Canal	-, -, N	3,363 (0.16, 2,940, 2019)	88	2
		Washington Northern Inland Waters.	-, -, N	16,451 (0.07, 15,462, 2019).	928	40
Northern Elephant Seal	*Mirounga angustirostris*	CA Breeding	-, -, N	187,386 (N/A, 85,369, 2013).	5,122	13.7

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal SARs online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

[4] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).

[5] Nest is based upon count of individuals identified from photo-ID catalogs in analysis of a subset of data from 1958–2018.

[6] Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

As indicated above, all 10 species (with 14 managed stocks) in table 3 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed project areas are included in table 3–1 of the application for two consecutive IHAs. While Pacific white-sided dolphin, bottlenose dolphin, long-beaked common dolphin, and Risso's dolphin have been documented in the Puget Sound, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Additionally, the range of the southern Puget Sound stock of harbor seal does not overlap with the project area and the stock is not discussed further. These species are very rare in Puget Sound and are not expected to occur near any of the MPR installations.

In addition, the northern sea otter may be found in the Puget Sound area. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Gray Whale

Gray whales are observed in Washington inland waters in all months of the year, with peak numbers occurring from March through June (Calambokidis *et al.,* 2010). Most whales sighted are part of a small regularly occurring group of 6 to 10 whales that use the northern Puget Sound as a springtime feeding area (Calambokidis *et al.,* 2010; Calambokidis, 2017). Observed feeding areas are located in Saratoga Passage between Whidbey and Camano Islands including Crescent Harbor, and in Port Susan Bay located between Camano Island and the mainland north of Everett (Calambokidis *et al.,* 2010). Gray whales that are not identified with the regularly occurring feeding group are occasionally sighted in Puget Sound. These whales are not associated with feeding areas and are often emaciated (WDFW, 2012).

In the waterways near NBK Bremerton (Rich Passage/Sinclair Inlet/Dyes Inlet/Agate Passage), 11 opportunistic sightings of gray whales were reported to the Orca Network (a public marine mammal sightings database) between 2003 and 2012. In October 2020, PSOs observed a gray whale near NBK Bangor during construction associated with a Pier Extension Project (DoN, 2021). PSOs were on site observing marine mammals for 99 days between July 2020 and January 2021 (DoN, 2021) and for 32 days between October 2021 and January 2022 (DoN, 2022). However, gray whales were not observed during monitoring efforts associated with other projects occurring at relevant Navy installations in Puget Sound. This includes two projects occurring at NBK Bangor: the Explosives Handling Wharf Pile Replacement Project (monitoring occurred on 14 days between August 2021 and October 2021) (Hamer Environmental, 2021), and the Service Pier B710 Pile Replacement Project (monitoring occurred on 4 days between December 2021 and January 2022) (Sandoval *et al.,* 2022), and one project occurring at NBK Manchester in which PSOs monitored for 11 days between September and December 2021 for the Pier B213 Fender Replacement Project (Sandoval and Johnson, 2021).

There is a Biologically Important Area (BIA) for migrating gray whales in the inland waters of Puget Sound from January through July and October through December and for feeding gray whales between March and May (Calambokidis *et al.,* 2015).

Between 2019 and 2023, there was an Unusual Mortality Event (UME) for gray whales occurring along the West Coast from Mexico through Alaska. While most of the strandings associated with this UME have been documented along Washington's Pacific coast, 14 gray whale strandings have been reported in inland waters between February and July, 2 of which were reported near NS Everett (May 2019 and April 2020); one at the mouth of Hood Canal (May 2019), and one near NBK Bremerton (March 2021). Additionally, a gray whale spent several weeks in Dyes Inlet near NBK Bremerton in April and May 2023 and subsequently stranded near Olympia, Washington in June of that year. Gray whales are rarely sighted in Hood Canal south of the Hood Canal Bridge, including a stranded whale at Belfair State Park (Orca Network, 2022).

Gray whales are expected to occur in the waters surrounding all four installations. However, gray whales are expected to occur primarily from March through June when in-water construction will not occur. Therefore, although some exposure to individual gray whales could occur at the four facilities, project timing will help to minimize potential exposures.

Humpback Whale

On September 8, 2016, NMFS divided the once single species into 14 distinct population segments (DPS) under the ESA, removed the species-level listing as endangered, and, in its place, listed four DPSs as endangered and one DPS as threatened (81 FR 62259, September 8, 2016). The remaining nine DPSs were not listed. There are four DPSs in the North Pacific, including Western North Pacific and Central America, which are listed as endangered, Mexico, which is listed as threatened, and Hawaii, which is not listed.

The 2022 Pacific SARs described a revised stock structure for humpback whales which modifies the previous stocks designated under the MMPA to align more closely with the ESA-designated DPSs (Caretta *et al.,* 2023; Young *et al.,* 2023). Specifically, the three previous North Pacific humpback whale stocks (Central and Western North Pacific stocks and a CA/OR/WA stock) were replaced by five stocks, largely corresponding with the ESA-designated DPSs. These include Western North Pacific and Hawaii stocks and a Central America/Southern Mexico-CA/OR/WA stock (which corresponds with the Central America DPS). The remaining two stocks, corresponding with the Mexico DPS, are the Mainland Mexico-CA/OR/WA and Mexico-North Pacific stocks (Caretta *et al.,* 2023; Young *et al.,* 2023). The former stock is expected to occur along the west coast from California to southern British Columbia, while the latter stock may occur across the Pacific, from northern British Columbia through the Gulf of Alaska and Aleutian Islands/Bering Sea region to Russia.

The Hawai'i stock consists of one demographically independent population (DIP)—Hawai'i—Southeast Alaska/Northern British Columbia DIP and one unit—Hawai'i—North Pacific unit, which may or may not be composed of multiple DIPs (Wade *et al.,* 2021). The DIP and unit are managed as a single stock at this time, due to the lack of data available to separately assess them and lack of compelling conservation benefit to managing them separately (NMFS, 2023; NMFS, 2019; NMFS, 2022b). The DIP is delineated based on two strong lines of evidence: genetics and movement data (Wade *et al.,* 2021). Whales in the Hawai'i—Southeast Alaska/Northern British Columbia DIP winter off Hawai'i and largely summer in Southeast Alaska and Northern British Columbia (Wade *et al.,* 2021). The group of whales that migrate from Russia, western Alaska (Bering Sea and Aleutian Islands), and central Alaska (Gulf of Alaska excluding Southeast Alaska) to Hawai'i have been delineated as the Hawai'i-North Pacific unit (Wade *et al.,* 2021). There are a small number of whales that migrate between Hawai'i and southern British Columbia/Washington, but current data and analyses do not provide a clear understanding of which unit these whales belong to (Wade *et al.,* 2021) (Caretta *et al.,* 2023; Young *et al.,* 2023).

The Mexico—North Pacific unit is likely composed of multiple DIPs, based on movement data (Martien *et al.,* 2021; Wade, 2021, Wade *et al.,* 2021). However, because currently available data and analyses are not sufficient to delineate or assess DIPs within the unit, it was designated as a single stock (NMFS, 2023a; NMFS, 2019; NMFS, 2022c). Whales in this stock winter off Mexico and the Revillagigedo Archipelago and summer primarily in Alaska waters (Martien *et al.,* 2021; Carretta *et al.,* 2023; Young *et al.,* 2023).

Within U.S. west coast waters, three current DPSs may occur: The Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS (endangered). According to Wade *et al.* (2021), the probability that whales encountered in Washington waters are from a given DPS are as follows: Hawaii, 69 percent; Mexico (CA-OR-WA), 25 percent; Central America, 6 percent.

Humpback whales have been reported in the Puget Sound during every month in 2022 (Orca Network, 2023). Most humpback whale sightings reported since 2003 were in the main basin of Puget Sound with numerous sightings in the waters between Point No Point and Whidbey Island, Possession Sound, and southern Puget Sound in the vicinity of Point Defiance. Some of the reported sightings were in the vicinity of NS Everett and NBK Manchester. A few sightings of possible humpback whales were reported by Orca Network in the waters near NBK Bremerton and between January 2003 and December 2015. Humpback whales were sighted in the vicinity of Manette Bridge in Bremerton in March and May 2016, and May 2017 (Orca Network, 2017), and a carcass was found under a dock at NBK Bremerton in June 2016 (Cascadia Research, 2016).

In Hood Canal, single humpback whales were observed for several weeks in 2012 and in 2015 (Orca Network, 2022). Multiple sightings in Hood Canal were reported in June 2019, February through May 2020, and August 2021 (Orca Network, 2022). Prior to the 2012 sightings, there were no confirmed reports of humpback whales entering Hood Canal (Orca Network, 2022).

Humpback whales were not observed by protected species observers (PSOs) during monitoring completed for Navy construction projects at NBK Bangor (DoN, 2021; DoN, 2022; Hamer Environmental, 2021; Sandoval *et al.,* 2022) and NBK Manchester (Sandoval and Johnson, 2021; Sandoval *et al.,* 2022; Hamer Environmental, 2021). The number of humpback whales potentially present near any of the four naval installations over the project time period is expected to be low in any month.

Minke Whale

Sightings of minke whales in Puget Sound are infrequent, with approximately 14 opportunistic sightings recorded south of the Admiralty Inlet between 2005 and 2012, from March through October. In recent years (2022 and 2023), possible sightings of a single minke whale have been reported near NBK Bangor in September and October (the Orca Network 2022 and 2023), and in 2021 and 2022, a few minke whale sightings were reported south of Whidbey Island by the Pacific Whale Watch Association (Gless and Krieger, 2023). However, minke whales were not observed by PSOs during monitoring completed for Navy construction projects at NBK Bangor (DoN, 2021; DoN, 2022; Hamer Environmental, 2021; Sandoval *et al.,* 2022) and NBK Manchester (Sandoval and Johnson, 2021; Sandoval *et al.,* 2022; Hamer Environmental, 2021) and the number of minke whales potentially present near any of the four installations is expected to be very low in any month and even lower in winter months.

Killer Whale (Transient)

Groups of transient killer whales were observed for lengthy periods in Hood Canal in 2003 (59 days) and 2005 (172 days) (London, 2006), but were not observed again until 2016, when they were seen on a handful of days between March and May (including in Dabob Bay). Transient killer whales were observed by PSOs in December 2020 and December 2021 during construction at NBK Bangor (DoN, 2021; DoN, 2022). Transient killer whales have been seen infrequently near NBK Bremerton, including in Dyes Inlet and Sinclair Inlet (*e.g.,* sightings in 2010, 2013, 2015, 2022, and 2023) (Orca Network, 2023). Transient killer whales have occasionally been observed transiting through Rich Passage near NBK Manchester. In 2022, transient killer whales were observed in Possession Sound near NS Everett.

West Coast transient killer whales most often travel in small pods averaging four individuals (Baird and Dill, 1996); however, the most commonly observed group size in Puget Sound (waters east of Admiralty Inlet, including Hood Canal, through South Puget Sound and north to Skagit Bay) from 2004 to 2010 was 6 whales (Houghton *et al.,* 2015). This is consistent with the mean group size of transient killer whales observed by PSOs during monitoring for year 1 of the service pier extension project at NBK Bangor in 2021 (DoN, 2021). Mean group size of killer whales observed at this site during year 2 was 5 (DoN, 2022). Transient killer whales were not observed by PSOs during monitoring completed for other Navy construction projects completed at NBK Bangor (Hamer Environmental, 2021; Sandoval *et al.,* 2022) or NBK Manchester (Sandoval and Johnson, 2021; Sandoval *et al.,* 2022; Hamer Environmental, 2021).

Killer Whale (Resident)

Southern Resident Killer Whales (SRKW) are expected to occur occasionally in the waters surrounding all of the installations except those in Hood Canal, where they have not been reported since 1995 (NMFS, 2006; 86 FR 41668, August 2, 2021). SRKW are rare near NBK Bremerton, with the last confirmed sighting in Dyes Inlet in 1997. Southern residents have been observed in Saratoga Passage and Possession Sound near NS Everett. SRKW were not observed by PSOs during construction activities occurring at NBK Manchester (Sandoval and Johnson, 2021) and NBK Bangor (DoN, 2021; DoN, 2022; Hamer Environmental, 2021; Sandoval *et al.,* 2022).

The stock contains three pods (J, K, and L pods), with pod sizes ranging from approximately 16 (in K pod) to 34 (in L pod) individuals. Group sizes encountered can be smaller or larger if pods temporarily separate or join together.

Critical habitat for SRKW, designated pursuant to the ESA and revised in 2018 (80 FR 9366, March 5, 2018) includes three specific areas: (1) Summer core area in Haro Strait and waters around the San Juan Islands; (2) Puget Sound; and (3) Strait of Juan de Fuca. The primary constituent elements essential for conservation of the habitat are: (1) Water quality to support growth and development; (2) Prey species of sufficient quantity, quality, and availability to support individual growth, reproduction, and development, as well as overall population growth; and (3) Passage conditions to allow for migration, resting, and foraging. The Puget Sound segment of the designated critical habitat for SRKW is defined as the area south of the Deception Pass Bridge, west of the entrance to Admiralty Inlet, and north of the Hood Canal Bridge. Although the three naval installations that fall within this area are excluded from the area designated as Critical Habitat under the ESA, they do contain the aforementioned Primary Constituent Elements (PCEs). However, we note that water quality and habitat for prey species is generally degraded in the vicinity of these industrial environments relative to other areas contacting the PCEs that may be less impacted (see Effects of Specified Activities on Marine Mammals and Their Habitat section). SRKW have been observed in this area in all seasons but most occurrence here (especially the J pod) typically correlates with fall salmon runs (NMFS 2006).

Dall's Porpoise

Dall's porpoise are known to occur in Puget Sound, and have been sighted as far south as Carr Inlet in southern Puget Sound and as far north as Saratoga Passage, north of NS Everett (Nysewander *et al.,* 2005; WDFW, 2008). Dall's porpoise could also occasionally occur in Hood Canal with the last observation in deeper water near NBK Bangor in 2008 (Tannenbaum *et al.,* 2009). However, Dall's porpoise were not observed during vessel line-transect

surveys and other monitoring efforts completed in Hood Canal (including Dabob Bay) in 2011 (HDR, 2012). Dall's porpoises have not been documented in the Rich Passage to Agate Passage area in the vicinity of NBK Bremerton, but have been observed in Possession Sound near NS Everett (primarily during winter) (Nysewander *et al.,* 2005; WDFW, 2008). Dall's porpoises could be present in waters in the vicinity of any of the installations considered here, and are considered more likely to occur during winter months than summer months in groups of up to 25 individuals. Dall's porpoise were not observed by PSOs during monitoring associated with construction activities at NBK Bangor (Hamer Environmental 2021, Sandoval *et al.,* 2022; DoN, 2021; DoN 2022) and NBK Manchester (Sandoval and Johnson, 2021).

Harbor Porpoise

Sightings of harbor porpoise in Hood Canal north of the Hood Canal Bridge have increased in recent years (Evenson *et al.,* 2016; Elliser *et al.,* 2021; Rone *et al.,* 2024). Across three seasons, Jefferson (2016) estimated 185 individuals in Hood Canal based on aerial surveys completed in 2013–2015, and less than a decade later, Rone's (2024) population estimates based on vessel based surveys completed in 2022–2023 in Hood Canal ranged from 308 individuals in the winter to 1,385 individuals in the fall. Mean group size of harbor porpoises for each survey season in the 2013–2016 aerial surveys was 1.7 (Smultea *et al.,* 2017) and similarly, 1.6 individuals per group in Hood Canal during surveys completed in 2023 (Rone *et al.,* 2024).

Information is available on harbor porpoise occurrence in Puget Sound (Navy, 2019; Smultea *et al.,* 2022) and more recently some limited site-specific (within 500 meters) information is available for the Navy installations (DoN, 2021; DoN, 2022; Sandoval and Johnson, 2022).

PSOs associated with a service pier extension project at NBK Bangor monitored for 95 days between July 16, 2020 and January 13, 2021. Harbor porpoise were observed each month during the monitoring period, with peak numbers recorded in August. A total of 420 sightings of harbor porpoise groups were recorded during this time (DoN, 2021). The closest harbor porpoises came to the project site during pile driving operations was 75 m. Harbor porpoise were also observed during year 2 of this project, which took place on 32 days between October 19, 2021 and January 14, 2022. Groups of harbor porpoise were observed on 12 occasions in October, December and January (DoN, 2022); Sightings were estimated to be 8,000 m from the project site during pile driving operations. However, porpoise sightings were notably absent in a 21 square kilometers (km^2) area adjacent to the NBK Bangor within the otherwise high-density region, during surveys completed to collect fine-scale marine mammal occurrence data in Hood Canal (Rone *et al.,* 2024).

At NBK Manchester, a total of 17 harbor porpoise were detected by PSOs associated with a fender pile replacement project at Manchester Fuel Depot on 11 days between September 28, 2021 and December 10, 2021 (Sandoval and Johnson, 2022).

Finally, monitoring reports are not available for NS Everett, but according to the Navy's application, harbor porpoises have been observed infrequently at this installation. See IHA application).

California Sea Lion

California sea lions are typically present most of the year except for mid-June through July in Washington inland waters, with peak abundance between October and April (Navy, 2023). During summer months and associated breeding periods, the inland waters are not considered a high-use area by California sea lions, as they would be returning to rookeries in California waters. However, as described below, surveys at the naval installations indicate that a few individuals may remain year-round (Navy, 2023).

The Navy conducts surveys at its installations in Puget Sound that have sea lion haulouts. Specifically, California sea lion haul-outs occur at NBK Bangor, NBK Bremerton, and NS Everett (though California sea lions may haul out opportunistically at any location). California sea lions have been documented during shore-based surveys at NBK Bangor in Hood Canal since 2008 in all survey months, with as many as 320 individuals observed at one time (October 2018) hauled out on submarines at Delta Pier and on Port Security Barrier (PSB) floats (Navy, 2023). Additionally, California sea lions were observed consistently at NBK Bangor during Navy construction projects: 557 California Sea Lions were observed across 99 days between July 2020 and January 2021 (DoN, 2021); 57 were observed across 32 days between October 2021 and January 2022 (DoN, 2022); 44 California Sea Lions were observed across 14 days between August 2021 and October 2021 (Hamer Environmental, 2021); and 3 were observed across 4 days between December 2021 and January 2022, (Sandoval *et al.,* 2022).

California sea lions have been documented on PSB floats during shore- and boat-based surveys at NBK Bremerton since 2010, with as many as 412 individuals hauled out at one time (October 2019) (Navy, 2023).

California sea lions have been documented during shore-based surveys at NS Everett from 2012 to 2022 in all survey months, with as many as 267 individuals hauled out at one time (April 2020) on PSB floats.

California sea lions haul out on floating platforms in Clam Bay approximately 0.5 mi (0.8 km) offshore from the Manchester Fuel Depot's finger pier, and approximately 13 km (8 mi) from NBK Bremerton. PSO's observed a total of 276 California Sea Lions at NBK Manchester across 11 monitoring days occurring between September and December 2021 (Sandoval and Johnson, 2021).

The Navy conducted surveys of sea lions on the floats from 2012 through 2016, and 2018 through 2022. In 2020, the surveys were expanded to include Orchard Rocks, a haulout approximately 0.8 mi (1.3 km) northeast of Manchester Fuel Depot that is available at lower tides. Between 2012 and 2016, California sea lions were observed in every survey month except July and August, with as many as 130 individuals present in one survey in October 2014. Aerial surveys were conducted by WDFW from March–April 2013, July–August 2013, November 2013, and February 2014. These surveys detected California sea lions on the floating platforms during all survey months except July, with up to 54 individuals present on one survey in November 2013. In 2018, the number of sea lions decreased corresponding to the removal of floats. Numbers subsequently increased following the reintroduction of floats in 2021. During this time, California sea lions were observed on the floating platforms during all survey months except July, with up to 212 individuals present on 1 survey in February 2022.

California sea lions are expected to be exposed to noise from project activities at NBK's Bangor, Bremerton, Manchester, and NS Everett because haul-outs are at these installations or nearby. Exposure is estimated to occur primarily from August through the end of the in-water work window in mid-January or mid-February.

Steller Sea Lion

Steller sea lions have been seasonally documented in shore-based surveys at NBK Bangor in Hood Canal since 2008

with a maximum of 21 individuals observed in November 2019 (Navy, 2023). Surveys at NBK Bangor indicate Steller sea lions begin arriving in September and depart by the end of May (Navy, 2023). Steller sea lions were not observed at NBK Bangor during construction occurring on 14 days between August and October 2021 (Hamer Environmental, 2021), on 4 construction days occurring between December and January 2022 (Sandoval, 2022), or on 32 construction days between October and January (DoN, 2022). However, 87 Steller sea lions were observed across 99 days between July and January 2021 (DoN, 2021).

Steller sea lions have not been detected during shore-based surveys at NBK Bremerton since the surveys were initiated in 2010 (Navy, 2023). A Steller sea lion was sighted on a float on the floating security barrier during a vessel survey in 2012 (Lance, 2012 personal communication) and others were detected during aerial surveys conducted by WDFW (Jeffries, 2000).

Steller sea lions haul out on floating platforms in Clam Bay approximately 0.5 mi (0.8 km) offshore from the NBK Manchester finger pier, and approximately 8 mi (13 km) from NBK Bremerton. The number of Steller sea lions in the vicinity of NBK Manchester is limited by the variable size and availability of floating platforms in Clam Bay. As discussed above, the Navy has conducted surveys of sea lions on the floats since November 2012; however, no surveys were conducted September 2013 through November 2013 and July 2017 through June 2018 (Navy, 2023). Steller sea lions were seen in all surveyed months except for June, July, and August with as many as 43 individuals present in September 2021.

Shore-based surveys conducted since July 2012 at NS Everett have rarely detected Steller sea lions. However, occasional observations have been reported from the PSB or in the Notch Basin, generally one at a time (Navy, 2023). Other than these detections on the installation's PSBs, the nearest known Steller sea lion haulout is 14 mi (23 km) away; therefore, Steller sea lions are expected to be a rare occurrence in waters off this installation during pile driving activities.

Harbor Seal

Harbor seals in Washington inland waters have been divided into three stocks: Hood Canal, Northern Inland Waters, and Southern Puget Sound. The range of the northern inland waters stock includes Puget Sound north of the Tacoma Narrows Bridge, the San Juan Islands, and the Strait of Juan de Fuca, while the southern Puget Sound stock range includes waters south of the Tacoma Narrows Bridge. Therefore, animals present at NBK Bremerton, NBK Manchester, and NS Everett are most likely to be from the northern inland waters stock, while those present at NBK Bangor are expected to be from the Hood Canal stock.

Harbor seals are expected to occur year-round at all installations with the greatest numbers expected at installations with nearby haulout sites. In Hood Canal, where NBK Bangor is located, known haulouts occur on the west side of Hood Canal at the mouth of the Dosewallips River and on the western and northern shorelines in Dabob Bay located approximately 8.1 mi (13 km) away. Vessel-based surveys conducted from 2007 to 2010 at NBK Bangor observed harbor seals in every month of surveys (Agness & Tannenbaum, 2009; Tannenbaum *et al.,* 2009, 2011). Harbor seals were routinely seen during marine mammal monitoring for the Navy's recent construction projects at this site (Hamer Environmental, 2021; Sandoval *et al.,* 2022; DoN, 2021; DoN, 2022). Small numbers of harbor seals have been documented hauling out opportunistically at NBK Bangor (*e.g.,* on the PSB floats, wavescreen at Carderock Pier, buoys, barges, marine vessels, and logs) and on man-made floating structures. The largest number of harbor seals observed in a single survey was 27 individuals in October 2018.

At NS Everett, Navy surveys were conducted regularly between 2012 and 2016, and again beginning in 2019, at which point surveys were expanded to include the entire East Waterway. The largest number of harbor seals observed in a single survey was 578 individuals in September 2019 (Navy, 2023). However, log rafts were removed from the East Waterway in the spring of 2022 and number of seals observed per survey has decreased. Harbor seals occupy the waters and haulout sites near NS Everett year-round. Harbor seal abundance is highest July through October. Mother pup pairs have been observed at NS Everett each summer since 2018, with a peak count of 96 pups observed in August 2021.

No haulouts have been identified at NBK Bremerton or Manchester. Single harbor seals have been observed swimming in these areas or hauled out on nearby rocks or on floats. The nearest documented haulouts to NBK Bremerton are across Sinclair Inlet, approximately 0.7 mi (1.1 km) away, and according to the Navy's application, is estimated to have less than 100 individuals (see IHA application). The nearest documented haulout to NBK Manchester is Orchard Rocks Conservation Area in Rich Passage, approximately 1.0 mi away. As discussed above, the Navy began surveying this area in June 2020, which has led to a dramatic increase in the number of harbor seals observed in proximity to Manchester Fuel Depot. A total of 25 harbor seals were observed by PSOs across 11 monitoring days occurring between September and December 2021 at this Naval installation (Sandoval and Johnson, 2021). The Navy has counted up to 153 harbor seals hauled-out and in the water near Orchard Rocks in June (Navy, 2023). Blakely Rocks is another known haulout in the vicinity of NBK Manchester, located approximately 3.5 mi away on the east side of Bainbridge Island. The haulout at Blakely Rocks is estimated to have less than 100 individuals (Jeffries, 2012 personal communication).

Northern Elephant Seal

No haul-outs occur in Puget Sound with the exception of individual elephant seals occasionally hauling out for two to four weeks to molt, usually during the spring and summer and typically on sandy beaches (Calambokidis and Baird, 1994). These animals are usually yearlings or subadults and their haul-out locations are unpredictable. One male subadult elephant seal was observed hauled out to molt at Manchester Fuel Depot in 2004 and a northern elephant seal was observed north of NBK Bangor in Hood Canal, from Kitsap Memorial Park in August 2020 (DoN, 2021). Northern elephant seals were not observed by PSOs during the Navy's other construction activities occurring at NBK Bangor (Hamer Environmental, 2021; Sandoval *et al.,* 2022; DoN, 2021; DoN, 2022) or NBK Manchester (Sandoval and Johnson, 2021). Although regular haul-outs occur in the Strait of Juan de Fuca, the occurrence of elephant seals in Puget Sound is unpredictable and rare.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.*

(2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 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 *et al.,* 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activity can occur from impact pile driving, and vibratory pile driving and removal in both years, and the use of DTH equipment in year 1 only. These effects may result in Level A or Level B harassment of marine mammals in the project area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (American National Standards Institute (ANSI), 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10 to 20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving and removal, and use of DTH equipment (year 1 only). The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; National Institute of Occupational Safety and Health (NIOSH), 1998; NMFS, 2018). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Three types of hammers would be used on this project: impact, vibratory, and DTH (year 1 only). Impact hammers

operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak Sound Pressure Levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or sometimes hydraulic) component integrated into to the DTH hammer to increase speed of progress through the substrate (*i.e.,* it is similar to a ''hammer drill'' hand tool). The sounds produced by the DTH method contain both a continuous, non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, we treat DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously.

Acoustic Effects

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal and DTH equipment is the primary means by which marine mammals may be harassed from the Navy's specified activities. In general, animals exposed to natural or anthropogenic sound may experience behavioral, physiological, and/or physical effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). Generally, exposure to pile driving and removal and DTH noise has the potential to result in behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior) and, in limited cases, auditory threshold shifts (TS). Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and removal and DTH noise on marine mammals are dependent on several factors, including but not limited to sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2003; Southall *et al.,* 2007). Here we discuss physical auditory effects (TSs) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced TS as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of TS is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB TS approximates PTS onset (Ward *et al.,* 1958; Ward *et al.,* 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, because there are limited empirical data measuring PTS in marine mammals (*e.g.,* Kastak *et al.,* 2008), largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—NMFS defines TTS as a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum TS clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000; Finneran *et al.,* 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower $SEL_{cum,}$ the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher $SEL_{cum,}$ the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in *Masking,* below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and

harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and table 5 in NMFS (2018).

Activities for this project include impact and vibratory pile driving, vibratory pile removal, and DTH drilling. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific, and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). Animals are most likely to habituate to sounds that are predictable and unvarying. The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007; Melcón *et al.,* 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (*e.g.,* Wensveen *et al.,* 2017). An evaluation of whether foraging disruptions would be likely to incur fitness consequences considers temporal and spatial scale of the activity in the context of the available foraging habitat and, in more severe cases may necessitate consideration of information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Respiration naturally varies with different behaviors, and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies also have shown that species and signal characteristics are important factors in whether respiration rates are unaffected or change, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2005; Kastelein *et al.,* 2006; Kastelein *et al.,* 2018; Gailey *et al.,* 2007; Isojunno *et al.,* 2018).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales (*Orcinus orca*) have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007; Rolland *et al.,* 2012). In some cases, however, animals may cease or alter sound production in response to underwater sound (*e.g.,* Bowles *et al.,* 1994; Castellote *et al.,* 2012; Cerchio *et al.,* 2014).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of

disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from airgun surveys (Malme *et al.,* 1984). Often avoidance is temporary, and animals return to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been observed in marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates and efficiency (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998).

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

To assess the strength of behavioral changes and responses to external sounds and SPLs associated with changes in behavior, Southall *et al.* (2007) developed and utilized a severity scale, which is a 10-point scale ranging from no effect (labeled 0), effects not likely to influence vital rates (low; labeled from 1 to 3), effects that could affect vital rates (moderate; labeled from 4 to 6), to effects that were thought likely to influence vital rates (high; labeled from seven to nine). Southall *et al.* (2021) updated the severity scale by integrating behavioral context (*i.e.,* survival, reproduction, and foraging) into severity assessment. For non-impulsive sounds (*i.e.,* similar to the sources used during the proposed action), data suggest that exposures of pinnipeds to sources between 90 and 140 dB (referenced to 1 micropascal (re 1 μPa)) do not elicit strong behavioral responses; no data were available for exposures at higher received levels for Southall *et al.* (2007) to include in the severity scale analysis. Reactions of harbor seals were the only available data for which the responses could be ranked on the severity scale. For reactions that were recorded, the majority (17 of 18 individuals/groups) were ranked on the severity scale as a 4 (defined as moderate change in movement, brief shift in group distribution, or moderate change in vocal behavior) or lower. The remaining response was ranked as a six (defined as minor or moderate avoidance of the sound source).

The Navy documented marine mammals during construction activities at NBK Manchester (September 28 and December 10, 2021) and NBK Bangor (2021 and 2022) during work that preceded these proposed IHAs as well as during the installation of a service pier. Harbor seals were consistently the most frequently observed marine mammal in the area observed by PSOs. During pile driving activities at these installations, harbor seals were most commonly observed typically traveling and swimming, though some behaviors recorded during pile driving activities indicated that harbor seals were aware of the construction, such as less foraging reported and looking at the construction site or startling. Likewise California sea lions were observed traveling and swimming during pile driving activities, but in a couple instances were observed porpoising or breaching. Harbor porpoises were observed traveling, milling, porpoising and a gray whale was observed slow and fast traveling and milling. At NBK Bangor, a total of three harbor seals were observed foraging, socializing, feeding (when fish kills were apparent) during impact pile driving. Behavior changes noted during pile driving included startle responses, splashing, swimming in circles, re-entering water after being hauled out and looking in all directions and swimming fast.

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness. Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses

glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA. Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of additional incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further.

Anticipated Effects on Marine Mammal Habitat

The Navy's construction activities could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). During DTH, impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify a portion of Puget Sound (Year 1 and Year 2) and Hood Canal (Year 2 only) where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed and removed. In general, turbidity associated with the pile installation is localized to about 25-ft (7.6 m) radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be minimal for marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

In-Water Construction Effects on Potential Foraging Habitat—The areas likely impacted by the project are relatively small compared to the available habitat in Puget Sound (Year 1 and Year 2) and Hood Canal (Year 2 only). The total seafloor area affected by pile installation and removal is a small area compared to the vast foraging area available to marine mammals in the area. At best, the impacted areas provide marginal foraging habitat for marine mammals and fishes. Furthermore, pile driving and removal at the project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish or, in the case of transient killer whales, other marine mammals) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is

anticipated. Any behavioral avoidance by fish or marine mammals of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

Effects on Potential Prey—Construction activities would produce continuous (*i.e.,* vibratory pile driving and DTH drilling) and intermittent (*i.e.,* impact driving and DTH drilling) sounds. Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001; Scholik and Yan, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4 to 6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fishes from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the expected short daily duration of individual pile driving events and the relatively small areas being affected. It is also not expected that the industrial environment of the Navy installations provides important fish habitat or harbors significant amount of forage fish.

The area likely impacted by the activities is relatively small compared to the available habitat in inland waters in the region. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for Navy construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant. Effects to habitat will not be discussed further in this document.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through the IHAs, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* impact and vibratory pile driving and removal and DTH drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for phocids because predicted auditory injury zones are larger than for mid-frequency cetacean species and/or otariids, and they can be difficult to detect. Auditory injury is unlikely to occur for mid, low, and high-frequency cetacean species and otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (c) of 120 dB (re 1 μPa) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The Navy's proposed activity includes the use of continuous (vibratory pile driving and removal and DTH drilling) and impulsive (impact pile driving and DTH drilling) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μPa is applicable, respectively.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Navy's proposed activity includes the use of impulsive (impact pile driving and DTH drilling) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in the table below. 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.
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 SEL_{cum} (L_E) has a reference value of 1μPa²s. In this table, thresholds are abbreviated to reflect ANSI standards (ANSI, 2013). However, peak sound pressure is defined by ANSI 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 SEL_{cum} 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 SEL_{cum} 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.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss (TL) coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* pile driving and removal and DTH drilling).

The project includes vibratory pile installation and removal, impact pile driving, and DTH drilling in year 1 and vibratory pile installation and removal and impact pile driving in year 2. Source levels for these activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and activity each year are presented in table 6. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source type simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and continuous thresholds are used to evaluate Level B harassment. With regards to DTH mono-hammers, NMFS recommends proxy levels for Level A harassment based on available data

regarding DTH systems of similar sized piles and holes (Heyvaert and Reyff, 2021) (table 1, table 7 and table 8 includes number of piles and duration each year; table 6 includes sound pressure and sound exposure levels for each pile type).

The Navy proposed to use bubble curtains when impact driving steel piles (relevant to Year 2 activities only). For the reasons described in the next paragraph, we assume here that use of the bubble curtain would result in a reduction of 8 dB from the assumed SPL (rms) and SPL (peak) source levels for these pile sizes, and reduce the applied source levels accordingly.

During the 2023 study at NBK Bremerton, the Navy conducted comparative measurements of source levels when impact driving steel piles with and without a bubble curtain. Underwater sound levels were measured at two locations during the installation of one 24-in diameter steel pile and four 36-in steel piles. The bubble curtain used during the measurements reduced median peak sound levels by between 8 and 12 dB, median RMS sound levels by 10 and 12 dB, and median single strike SEL sound levels by 7 and 8 dB. The analysis included in the proposed rule for the regulations preceding these IHAs (83 FR 9366, March 5, 2018) as well as results from the NBK Bangor Trident Support Facilities Explosive Handling Wharf study (Navy 2013), are consistent with these findings. While proper set-up and operation of the system is critical, and variability in performance should be expected, we believe that in the circumstances evaluated here an effective attenuation performance of 8 dB is a reasonable assumption.

TABLE 6—ESTIMATES OF MEAN UNDERWATER SOUND LEVELS GENERATED DURING VIBRATORY AND IMPACT PILE INSTALLATION, DTH DRILLING, AND VIBRATORY PILE REMOVAL FOR YEAR 1 AND YEAR 2

Pile driving method	Pile type	Pile size	dB RMS	dB Peak	dB SEL	Attenuation	Reference
Year 1							
Impact	Concrete	18-in	170	184	159	N/A	Navy 2015.
		24-in	174	188	164	N/A	Navy 2015.
Vibratory	Timber	13-in	161	N/A	N/A	N/A	Greenbusch Group, Inc. 2019.
DTH	Concrete	24-in	167	184	159	N/A	Heyvaert & Reyff 2021.
Year 2							
Impact	Steel [1]	12	177	192	167	−8 dB [1]	Caltrans 2015, 2020.
		36	194	211	181	−8 dB [1]	Navy 2015b.
Vibratory		12	153	N/A	N/A	N/A	Navy 2015b.
		24	161	N/A	N/A	N/A	Navy 2015b.
		36	166	N/A	N/A	N/A	Navy 2015b.

Note: dB peak = peak sound level; DTH = down-the-hole drilling; rms = root mean square; SEL = sound exposure level.
[1] Values modeled for impact driving of 12-inch and 36-inch steel piles will be reduced by 8 dB for noise exposure modeling to account for attenuation from a bubble curtain

TL is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$TL = B * \mathrm{Log10}\,(R1/R2)$,

where

TL = transmission loss in dB
B = transmission loss coefficient
*R*1 = the distance of the modeled SPL from the driven pile, and
*R*2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured TL, a practical spreading value of 15 is used as the TL coefficient in the above formula. Site-specific TL data for the Puget Sound are not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A harassment and Level B harassment thresholds.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below.

TABLE 7—USER SPREADSHEET INPUTS, YEAR 1

	Vibratory	Impact		DTH
	13-in Timber	18-in Concrete	24-in Concrete	24-in Concrete
	Installation or removal	Installation	Installation	Installation
Spreadsheet Tab Used	A.1) Vibratory Pile Driving	E.1) Impact Pile Driving	E.1) Impact Pile Driving	E.2) DTH Drilling.
Source Level (SPL)	161 RMS	159 SEL	164 SEL	167 RMS, 159 SEL.
Transmission Loss Coefficient	15	15	15	15.

TABLE 7—USER SPREADSHEET INPUTS, YEAR 1—Continued

	Vibratory	Impact		DTH
	13-in Timber	18-in Concrete	24-in Concrete	24-in Concrete
	Installation or removal	Installation	Installation	Installation
Weighting Factor Adjustment (kHz)	2.5	2	2	2.
Activity Duration per day (minutes)	90			80.
Strike Rate per second				12.
Number of strikes per pile		1,000	1,000.	
Number of piles per day	6	5	4	2.
Distance of sound pressure level measurement.	10	10	10	10.

TABLE 8—USER SPREADSHEET INPUTS, YEAR 2

	Vibratory			Impact	
	12-in Steel	24-in Steel	36-in Steel	12-in Steel; BC	36-in Steel; BC
	Installation or removal	Installation or removal	Installation or removal	Installation	Installation
Spreadsheet Tab Used.	A.1) Vibratory Pile Driving	A.1) Vibratory Pile Driving	A.1) Vibratory Pile Driving	E.1) Impact Pile Driving	E.1) Impact Pile Driving.
Source Level (SPL).	153 RMS	161 RMS	166 RMS	167 SEL	181 SEL.
Transmission Loss Coefficient.	15	15	15	15	15.
Weighting Factor Adjustment (kHz).	2.5	2.5	2.5	2	2.
Activity Duration per day (minutes).	30	90	133	N/A	N/A.
Number of strikes per pile.	N/A	N/A	N/A	1,000	1,000.
Number of piles per day.	2	6	4	2	4.
Distance of sound pressure level measurement.	10	10	10	10	10.

BC = Bubble Curtain

TABLE 9—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FROM VIBRATORY AND IMPACT PILE DRIVING AND DTH DRILLING

Pile type	Level A harassment isopleths (m)					Level B harassment isopleth (m)	Area of harassment zone (km^2)
	LF	MF	HF	PW	OW		
Year 1 Vibratory							
13-inch timber	8.9	<1	13.2	5.4	<1	5,412	16 km^2.
Impact							
18-inch concrete	73.3	2.6	87.4	39.3	2.9	46	0.007 km^2.
24-inch concrete	136.2	4.8	162.2	72.9	5.3	86	0.02 km^2.
DTH							
24-inch concrete	374.1	13.3	445.6	200.2	14.6	13,594	75 km^2.
Year 2 Vibratory							
12-inch steel	1.3	<1	<1	<1	<1	1,585	8 km^2.
24-inch steel	8.9	<1	13.2	5.4	<1	5,412	16 km^2.
36-inch steel	25.1	2.2	37.0	15.2	1.1	11,659	31 km^2.
Impact							
12-inch steel	39.8	1.4	47.4	21.3	1.6	39.8	0.005 km^2.

TABLE 9—LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FROM VIBRATORY AND IMPACT PILE DRIVING AND DTH DRILLING—Continued

Pile type	Level A harassment isopleths (m)					Level B harassment isopleth (m)	Area of harassment zone (km^2)
	LF	MF	HF	PW	OW		
36-inch steel	542.1	19.3	645.8	290.1	21.1	541.2	0.92 km^2.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations.

Available information regarding marine mammal occurrence in the vicinity of the four installations includes density information aggregated in the Navy's Marine Mammal Species Density Database (NMSDD; Navy, 2019) or site-specific survey information from particular installations (*e.g.,* local pinniped counts). More recent density estimates for harbor porpoise are available in Smultea *et al.* (2017) and Rone *et al.,* (2024). First, for each installation we describe anticipated frequency of occurrence and the information deemed most appropriate for the exposure estimates. For all facilities, large whales (humpback whale, minke whale, and gray whale), killer whales (transient and resident), Dall's porpoise, and elephant seal are considered as occurring only rarely and unpredictably, on the basis of past sighting records. For these species, average group size is considered in concert with expected frequency of occurrence to develop the most realistic exposure estimate. Although certain species are not expected to occur at all at some facilities—for example, resident killer whales are not expected to occur in Hood Canal—the Navy has developed an overall take estimate and request for these species for each project year.

All species described above are considered as rare, unpredictably occurring species. A density-based analysis is used for harbor porpoise (table 10), while data from site-specific abundance surveys are used for California sea lion, Steller sea lion, and harbor seal at all installations. One exception is that for Steller sea lion at NBK Bremerton, a density-based analysis is used because local data have resulted in no observations of this species (Navy, 2023).

TABLE 10—MARINE MAMMAL DENSITIES

Species	Region	Density (June–February)
Harbor porpoise	Hood Canal (Bangor)	[1] 0.81
	East Whidbey Island (Everett)	[2] 0.75
	Sinclair Inlet (Bremerton)	[2] 0.53
	Vashon (Manchester)	[2] 0.25
Steller Sea Lion	Puget Sound—Fall/Winter	[3] 0.05

Sources: [1] Rone *et al.,* 2024; [2] Smultea *et al.,* 2017; [3] Navy, 2019.

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

To quantitatively assess exposure of marine mammals to noise from pile driving activities, the Navy proposed three methods, to be used depending on the species' assumed spatial and temporal occurrence. For species with rare or infrequent occurrence at a given installation during the in-water work window, the likelihood of interaction was reviewed on the basis of past records of occurrence (described in Description of Marine Mammals in the Area of Specified Activities) and the potential maximum duration of work days at each installation, as well as total work days for all installations. Occurrence of the species in this category [*i.e.,* large whales, killer whales, elephant seal (all installations), and Dall's porpoise (Hood Canal only)] would not be anticipated to extend for multiple days. Except for SRKW, the probable duration of all rare, unpredictably occurring species is assumed to be two days, roughly equivalent to one transit in and out of a project site. In the case of SRKW, the probable duration is assumed to be one day only, as SRKW have not been observed near naval installations during work completed previously at these installations. The calculation for species with rare or infrequent occurrence is:

Exposure estimate = expected group size × probable duration

For species that occur regularly but for which site-specific abundance information is not available, density estimates (table 10) were used to determine the number of animals potentially exposed on any one day of pile driving or removal. The calculation for density-based analysis of species with regular occurrence is:

Exposure estimate = N (density) × Zone of Influence (ZOI, area) × days of pile driving

For remaining species, site-specific abundance information (*i.e.,* primarily the mean of monthly average counts per surveys completed between 2008 and 2022) was used. In cases where documented presence of a given pinniped species was variable throughout year and the mean of monthly average count (2008–2022) was ≥1, the mean of monthly maximum counts of surveys completed between 2008 and 2022 was used:

Exposure estimate = Abundance × days of pile driving

Large Whales—For each species of large whale (*i.e.,* humpback whale, minke whale, and gray whale), we assume rare and infrequent occurrence at all installations. For all three species, if observed, they typically occur singly or in pairs. Therefore, for all three species, we assume that a pair of whales may occur in the vicinity of an

installation for a total of two days. We do not expect that this would happen multiple times, and cannot predict where such an occurrence may happen, so propose to authorize take by Level B harassment of four of each large whale species each project year.

It is important to note that the Navy proposes to implement a shutdown of pile driving activity if any large whale is observed within any defined harassment zone (see Proposed Mitigation). Therefore, the proposed IHA is intended to provide insurance against the event that whales occur within Level B harassment zones that cannot be fully observed by monitors. As a result of this proposed mitigation, we do not believe that Level A harassment is a likely outcome upon occurrence of any large whale. The calculated Level A harassment zone is a maximum of 374 m for DTH installation of 24-in concrete piles in year 1 and 542 m for impact installation of 36-in steel piles with a bubble curtain in year, and this requires that a whale be present at that range for the full duration of 1,000 pile strikes. Given the Navy's commitment to shut down upon observation of a large whale in any harassment zone, and the likelihood that the presence of a large whale in the vicinity of any Navy installation would be known due to reporting via Orca Network, we do not expect that any whale would be present within a Level A harassment zone for sufficient duration to actually experience PTS.

Killer Whales—For transient killer whales, the proposed take authorization is derived via the same process described above for large whales: we assume an average group size of six whales occurring for a period of 2 days. The resulting total proposed authorization of take by Level B harassment of 12 for transient killer whales would also account for the low probability that a larger group occurred once. For SRKW, we assume an average group size of 20 whales occurring within the Level B harassment zone on one day each year. A group of 20 SRKW closely represents the average size of the pod most likely to occur near a Navy installation (the J pod), and corresponds to 75 percent of the average of all 3 pods that make up the stock. SRKW have not been observed near naval installations during work completed previously at these installations.

Similar to large whales, the Navy plans to implement shutdown of pile driving activity at any time that any killer whale is observed within any calculated harassment zone. We expect this to minimize the extent and duration of any behavioral harassment. Given the small size of calculated Level A harassment zones—maximum of 13 m for DTH in year 1, and 20 m for the worst-case scenario of impact-driven 36-in steel piles with a bubble curtain—we do not anticipate any potential for Level A harassment of killer whales.

Dall's Porpoise—We assume rare and infrequent occurrence of Dall's porpoise at all installations. If observed, they typically occur in groups of five (Smultea *et al.,* 2017). Therefore, we assume that a group of Dall's porpoise may occur in the vicinity of an installation for a total of two days. We do not expect that this would happen multiple times, and cannot predict where such an occurrence may happen, so conservatively propose to authorize take by Level B harassment of a total of 10 Dall's porpoise each project year.

The Navy plans to implement shutdown of pile driving activity at any time if a Dall's porpoise is observed in the Level A harassment zone. The calculated Level A harassment zone is as large as 445 m for DTH of 24-in concrete in year 1 and as large as 646 m for impact driving of 36-in steel piles with a bubble curtain in year 2. Take by level A harassment would require that a porpoise be present at that range for the full duration of 1,000 pile strikes. Given the rarity of Dall's porpoise in the area, the Navy's commitment to shut down upon observation of a porpoise within the Level A harassment zone, and the likelihood that a porpoise would engage in aversive behavior prior to experiencing PTS, we do not expect that any porpoise would be present within a Level A harassment zone for sufficient duration to actually experience PTS.

Harbor Porpoise—Level B exposure estimates for harbor porpoise were calculated for each installation each year using the appropriate density given in table 10, the largest appropriate ZOI for each pile type, and the appropriate number of construction days.

- *NBK Bangor:* Pile driving is not planned at this installation in year 1. For year 2, using the Hood Canal sub-region density, 36 days of pile driving in year 2, and the largest ZOIs calculated for each pile type at this location (31 km^2 for vibratory installation of 36-in steel piles) produces an estimate of 905 incidents of Level B harassment for harbor porpoise.
- *NBK Bremerton:* In year 1, using the Sinclair Inlet sub-region density, 31 days of pile driving, and the largest ZOI calculated for each pile type at this location (16 km^2 for removal and installation of 13-in timber piles, 0.2 km for impact installation of 24-in concrete piles, and 0.07 km for impact installation of 18-in concrete) produces an estimate of 93 incidents of Level B harassment for harbor porpoise. In year 2, using the Sinclair Inlet sub-region density, 24 days of pile driving, and the largest ZOI calculated for each pile type at this location (16 km^2 for vibratory removal and installation of 24-in steel piles) produces an estimate of 204 incidents of Level B harassment for harbor porpoise.
- *NBK Manchester:* In year 1, using the Vashon sub-region density, 37 days of pile driving, and the largest ZOI calculated for each pile type at this location (75.8 km^2 for DTH of 24-in concrete piles) produces an estimate of 701 incidents of Level B harassment for harbor porpoise. There are no pile driving activities planned at this installation in year 2.
- *NS Everett:* There are no pile driving activities planned at this installation in year 1. In year 2, using the East Whidbey sub-region density, 8 days of pile driving, and the largest ZOI calculated each pile type at this location (8 km^2) produces an estimate of 24 incidents of Level B harassment for harbor porpoise.

The Navy plans to implement shutdown of pile driving activity at any time if a harbor porpoise is observed in the Level A harassment zone. As a result of this proposed mitigation, we do not believe that Level A harassment is a likely outcome. There are two instances where the Level A harassment zone may extend beyond a distance where harbor porpoise may reliably be detected by PSOs. In Year 1, the Level A harassment zone is 445 m during DTH drilling of 24-in concrete at NBK Manchester. In Year 2, the Level A harassment zone is 645 m during impact driving of 36-in steel piles with a bubble curtain at NBK Bangor. However, Rone et al. (2024) reported a notable absence of harbor porpoise within 21 km^2 in front of NBK Bangor. In both cases, harbor porpoise are uncommon in the area. Given the Navy's commitment to shut down upon observation of a porpoise within the Level A harassment zone, and the likelihood that a porpoise would engage in aversive behavior prior to experiencing PTS, we do not expect that any porpoise would be present within a Level A harassment zone for sufficient duration to actually experience PTS.

Across all installations, we propose to authorize 794 takes by Level B harassment of harbor porpoise in year 1 and 1,157 takes by Level B harassment of harbor porpoise in year 2.

Steller Sea Lion—Level B harassment estimates for Steller sea lions were calculated for each installation using the appropriate density given in table 10 or

site-specific abundance, the largest appropriate ZOI for each pile type at each installation, and the appropriate number of days. Please see Marine Mammal Monitoring Report at Navy Region Northwest Installations: 2008–2022 (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*) for details of site-specific abundance information (Navy, 2023).

- *NBK Bangor:* Steller sea lions are routinely seen hauled out from mid-September through May, with a maximum daily haul-out count of 21 individuals in November (based on data collected between 2008 and 2022). Because the mean of monthly average counts per surveys between 2008–2022 was 1, we relied the average of the maximum count of hauled out Steller sea lions for each month in the in-water work window (July–January). The average of the monthly maximum counts during the in-water work window provides an estimate of 7.25 sea lions present per day. Using this value for 36 days in year 2 results in an estimate of 261 incidents of Level B harassment in year 2. There are no pile driving activities planned at this installation in year 1.
- *NBK Bremerton:* Steller sea lions have been documented only twice at this installation between 2008 and 2022. As such density values were used to estimate take at this location. Using the Puget Sound density value for fall-winter, 31 days of pile driving in year 1, and the largest ZOI calculated for each pile type at this location (16 km^2 for removal and installation of 13-in timber piles, 0.2 km for impact installation of 24-in concrete piles, and 0.07 km for impact installation of 18-in concrete) produces an estimate of 9 incidents of Level B harassment for Steller sea lion in year 1. Using the Puget Sound density value for fall-winter, 24 days of pile driving in year 2, and the largest ZOI calculated for each pile type at this location (16 km^2 for vibratory removal and installation of 24-in steel piles) produces an estimate of 18 incidents of Level B harassment for Steller sea lion in year 2.
- *NBK Manchester:* Steller sea lions are observed periodically at NBK Manchester since surveys began in 2012. We estimate take based on the monthly mean counts per surveys conducted from July to February, between 2012 and 2022, which provides an estimate of six Steller sea lions per day. In year 1, using this value for 37 days in results in an estimate of 222 incidents of Level B harassment. There are no pile driving activities planned at this installation in year 2.
- *NS Everett:* Steller sea lions were rarely observed at NS Everett between 2012 and 2022. All observations were of lone individuals hauled out on a PSB or in a nearby basin. We conservatively estimate that one Steller sea lion could occur within the project area per day. Using this value for 8 days in year 2 results in an estimate of 8 incidents of Level B harassment in year 2. There are no pile driving activities planned at this installation in year 1.

Given the small size of calculated Level A harassment zones—maximum of 15 m for the worst-case scenario of DTH-installed 24-in concrete piles in year 1 and maximum of 21 m for the worst-case scenario of impact-driven 36-in steel piles with the use of a bubble curtain in year 2—we do not anticipate any potential for Level A harassment of Steller sea lions.

Across all installations we propose to authorize take by 231 takes by Level B harassment of Steller sea lion in year 1 and 287 takes by Level B harassment of Steller sea lions in year 2.

California Sea Lion—Level B harassment estimates for California sea lions were calculated for each installation using the appropriate site-specific abundance, the largest appropriate ZOI for each pile type at each installation, and the appropriate number of days. Please see Marine Mammal Monitoring Report at Navy Region Northwest Installations: 2008–2022 (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*) for details of site-specific abundance information (Navy, 2023).

- *NBK Bangor:* California sea lions haul out in all months on floating PSB and on submarines docked at Delta Pier, with lower numbers in June through July. We estimate take based on the monthly mean counts per surveys conducted from July to January, between 2012 and 2022, which provides an estimate of 25 California sea lions per day. In year 2, using this value for 36 days results in an estimate of 900 incidents of Level B harassment in year 2. There are no pile driving activities planned at this installation in year 1.
- *NBK Bremerton:* California sea lions are routinely seen hauled out on floats at NBK Bremerton during most of the year. We estimate take based on the monthly mean count per surveys conducted from July through February, between 2010 and 2022, which provides an estimate of 98 California sea lions per day. In year 1, using this value for 31 days generates an estimate of 3,038 incidents of Level B harassment. In year 2, using this value for 24 days generates an estimate of 2,352 incidents of Level B harassment in year 2.
- *NBK Manchester:* California sea lions have been observed at this installation at least once each month of the year, with peak numbers occurring in October and November. Floats used as haulouts are periodically installed and removed, making numbers in the vicinity highly variable. We estimate take based on the monthly mean count per surveys conducted from July through February, between 2012 and 2022, which provides an estimate of 24 California sea lions per day. In year 1, using this value for 37 days generates an estimate of 1,274 incidents of Level B harassment. There are no pile driving activities planned at this installation in year 2.
- *NS Everett:* California sea lions have been observed every month of the year. We estimate take based on the monthly mean count per survey conducted from July through February between 2012 and 2022, which provides an estimate of 48 California sea lions per day. In year 2, using this value for 8 days in year 2 generates an estimate of 384 incidents of Level B exposures. There are no pile driving activities planned at this installation in year 1.

Given the small size of calculated Level A harassment zones—maximum of 15 m for the worst-case scenario of DTH-installed 24-in concrete piles in year 1 and maximum of 21 m for the worst-case scenario of impact-driven 36-in steel piles with the use of a bubble curtain in year 2—we do not anticipate any potential for Level A harassment of California sea lions.

Across all installations we propose to authorize 3,926 takes by Level B harassment of California sea lions in year 1 and 3,636 takes by Level B harassment of California sea lions in year 2.

Harbor Seal—Harbor seals are expected to occur year-round at all installations, with the greatest numbers expected at installations with nearby haul-out sites. Level B exposure estimates for harbor seals were calculated for each installation using the appropriate site-specific abundance, the largest appropriate ZOI for each pile type at each installation, and the appropriate number of days. Please see Marine Mammal Monitoring Report at Navy Region Northwest Installations: 2008–2022 (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities*) for details of site-specific abundance information (Navy, 2023).

Harbor seals are expected to be the most abundant marine mammal at all installations, often occurring in and around existing in-water structures in a way that may restrict observers' ability to adequately observe seals and subsequently implement shutdowns. In addition, the calculated Level A harassment zones are significantly larger than those for sea lions, which may also be abundant at various installations at certain times of year. For harbor seals in year 1, the largest calculated Level A harassment zone is 200 m (compared with a maximum zone of 15 m for sea lions), calculated for the worst-case scenario of DTH-installed 24-in concrete piles (other scenarios range from 5–75 m). In year 2, the largest calculated Level A harassment zone is 290 m (compared with a maximum zone of 21 m for sea lions), calculated for the worst-case scenario of impact-driven 36-in steel piles with the use of a bubble curtain (other scenarios range from 1–21 m). Therefore, we assume that some Level A harassment is likely to occur for harbor seals and provide installation-specific estimates below.

- *NBK Bangor:* Harbor seals are year-round residents at NBK Bangor and have been identified at least once during each calendar month over several survey years. They have been observed swimming and hauled out on man-made structures including docks, catwalks under the dock at Marginal Pier, PSBs, and boats along the NBK Bangor waterfront, The Navy plans to place fencing around the catwalks at Marginal Pier, which may reduce harbor seal haulout opportunities at NBK Bangor. Because the mean of monthly average counts per surveys between 2008–2022 was <1, we estimate take by Level B harassment based on the mean maximum count per month of surveys conducted from July to January, between 2008 and 2022, which provides an estimate of 16 harbor seals per day. In year 2, using this value for 36 days results in an estimate of 576 incidents of Level B exposures. There are no pile driving activities planned at this installation in year 1.

The Level A harassment zone expected to occur during impact installation of 36-in steel at NBK Bangor is 290 m. Since the Navy plans to maintain a shutdown zone of at 180 m (see table 13), the Navy estimates and NMFS agrees that one seal per day (n = 20) could remain within the calculated Level A harassment zone for a sufficient period to accumulate enough energy to result in PTS. As such, we propose to authorize 20 incidents of take by Level A harassment.

- *NBK Bremerton:* Observations of harbor seals are intermittent at NBK Bremerton. They are primarily observed swimming in the water around piers and structures and less frequently hauled out on floats and docked submarines. Because the mean of monthly average counts per surveys between 2008–2022 was <1, we estimate take based on the mean maximum count per month of surveys from July to February, between 2010 and 2022, which provides an estimate of two harbor seals per day. In year 1, using this value for 31 days results in an estimate of 62 incidents of Level B exposures. In year 2, using this value for 24 days results in an estimate of 48 incidents of Level B harassment.

In year 1, the Level A harassment zone expected to occur during impact installation of 18-in steel at NBK Bremerton is 39 m and the Level A harassment zone expected to occur during impact installation of 24-in steel is 73 m. Although the Navy plans to shut down at distances slightly larger than these Level A harassment zones (see table 12), the Navy assumes and NMFS agrees that it is possible that one seal per day could go unobserved and remain within the calculated zone for a sufficient period to accumulate enough energy to result in PTS. As such, we propose to authorize 20 takes by Level A harassment. In year 2, the largest Level A harassment zone is much smaller (<10 m) and as such we do not expect take by Level A harassment to occur and we do not propose to authorize such take.

- *NBK Manchester:* No harbor seal haulouts have been identified at NBK Manchester, but seals regularly haul out at Orchard Rocks and are observed swimming through the project area. We estimate take based on the monthly mean count per survey conducted from July through February between 2020 and 2022 (Orchard Rocks was incorporated into surveys in 2020), which provides an estimate of 10 harbor seals per day. In year 1, using this value for 37 days results in an estimate of 370 incidents of Level B harassment. There are no pile driving activities planned at this installation in year 2.

The Level A harassment zone expected to occur during DTH installation of 24-in concrete at NBK Manchester is 200 m. Since the Navy plans to shut down at 150 m due to practicability concerns (see table 12), the Navy assumes and NMFS agrees that one seal per day (n = 37) could remain within the calculated zone for a sufficient period to accumulate enough energy to result in PTS. As such, we propose to authorize 37 incidents of take by Level A harassment.

- *NS Everett:* Harbor seals haul out year round on floats, riprap, and human structures at NS Everett. We estimate take based on the monthly mean count per survey conducted from July through February between 2019 and 2022 (the east side of East Waterway was incorporated into surveys in 2019), which provides an estimate of 266 harbor seals per day. In year 2, using this value for 8 days results in an estimate of 2,128 incidents of Level B harassment. There are no planned pile driving activities at this installation in year 1.

The largest Level A harassment zone expected to occur at NS Everett is 21 m and the Navy plans to shut down at this distance should a harbor seal be observed entering or within this zone. As such we do not expect take by Level A harassment to occur and we do not propose to authorize such take here.

Any individuals exposed to the higher levels associated with the potential for PTS closer to the source might also be behaviorally disturbed, however, for the purposes of quantifying take we do not count those exposures of one individual as both a Level A harassment take and a Level B harassment take, and therefore takes by Level B harassment calculated as described above are further modified to deduct the proposed amount of take by Level A harassment. Therefore, in year 1, across all installations, NMFS proposes to authorize 57 takes by Level A harassment and 432 takes by Level B harassment for harbor seal, for a total of 489 takes. In year 2, across all installations, NMFS proposes to authorize 20 takes by Level A harassment and 2,752 takes by Level B harassment for harbor seal, for a total of 2,772 takes.

Northern Elephant Seal—Northern elephant seals are considered rare visitors to Puget Sound. However, solitary juvenile elephant seals have been known to sporadically haul out to molt in Puget Sound during spring and summer months. Because there are occasional sightings in Puget Sound, the Navy reasons that exposure of up to one seal to noise above Level B harassment thresholds could occur for a two-day duration for a total of 2 takes by Level B harassment of northern elephant seals each year.

The total proposed take authorization for all species each year is summarized in table 11 below. No authorization of take by Level A harassment is proposed for authorization except a total of 57 such incidents for harbor seals in year 1 and 20 such incidents for harbor seals in year 2.

TABLE 11—PROPOSED TAKE AUTHORIZATION BY LEVEL B HARASSMENT

Species	Stock	Year 1			Year 2		
		Level A harassment	Level B harassment	Proposed take as a percentage of stock abundance	Level A harassment	Level B harassment	Proposed take as a percentage of stock abundance
Humpback Whale	CenAmer./S Mex-CA-OR-WA	0	0	0	0	0	0
	Mex-CA-OR-WA		1	<1	0	1	<1
	Hawai'i		3	<1	0	3	<1
Minke Whale	CA-OR-WA	0	4	<1	0	4	<1
Gray Whale	Eastern N Pacific	0	4	<1	0	4	<1
Killer Whale	W Coast Transient	0	12	3	0	12	3
	E.N.P.—S Resident	0	20	27	0	20	27
Harbor Porpoise	WA. Inland	0	794	7	0	1,157	10
Dall's Porpoise	CA-OR-WA	0	10	<1	0	10	<1
Steller Sea Lion	Eastern US	0	231	<1	0	287	<1
California Sea Lion	US	0	3,926	2	0	3,636	1.4
Northern Elephant Seal	CA Breeding	0	2	<1	0	2	<1
Harbor Seal	WA N Inland	57	375	4	0	2176	13
	Hood Canal	0	0	0	20	576	17

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Timing—As described previously, the Navy would adhere to in-water work windows designed for the protection of fish. These timing windows would also benefit marine mammals by limiting the annual duration of construction activities. At NBK Bangor, the Navy would adhere to a July 16 through January 15 window, while at the remaining facilities this window is extended to February 15 each project year.

On a daily basis, in-water construction activities would occur only during daylight hours (sunrise to sunset) except from July 16 to September 15, when impact pile driving would only occur starting 2 hours after sunrise and ending 2 hours before sunset in order to protect marbled murrelets (*Brachyramphus marmoratus*) during the nesting season. The exception is NBK Bremerton, where marbled murrelets do not occur.

Shutdown Zone—For all pile driving, removal, and DTH drilling, the Navy would implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). For all pile driving activities, the Navy would establish a minimum shutdown zone with a radial distance of 10 m. This minimum zone is intended to prevent the already unlikely possibility of physical interaction with construction equipment and to establish a precautionary minimum zone with regard to acoustic effects. In most circumstances where the predicted Level A harassment zone exceeds the minimum zone, the Navy proposes to implement a shutdown zone greater or equal to the predicted Level A harassment zone (see tables 12 and 13). However, in cases where it would be challenging to detect marine mammals at the Level A harassment isopleth and frequent shutdowns would create practicability concerns (*e.g.,* for phocids during DTH at NBK Manchester in year 1 and impact pile driving at NBK Bangor in year 2), smaller shutdown zones have been proposed. In addition, the Navy proposes to implement shutdown upon observation of any large whales and killer whales within a calculated Level B harassment zone. Recognizing that the entirety of the Level B harassment zone cannot practicably be monitored, the Orca Network would be consulted prior to commencing pile driving each day, and pile driving would also be delayed or shutdown if low-frequency or mid-frequency cetaceans are reported near or approaching the Level B harassment zone. In all cases, predicted injury zones are calculated on the basis of cumulative sound exposure, as peak pressure source levels produce smaller predicted zones.

Finally, construction activities would be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone.

TABLE 12—SHUTDOWN ZONES, YEAR 1

Activity	Pile size/type	Shutdown zones (m)					Level B harassment zone (m)	Level B monitoring zone (m)
		LF	MF	HF	PW	OW		
Impact Installation	18-in Concrete	100	50	100	40	10	46	N/A
	24-in Concrete	170	90	170	75	10	86	N/A
Vibratory Installation or Removal	13-in Timber	[2] 5,412	[2] 5,412	15	10	10	5,412	[1] 400
DTH	24-in Concrete	[2] 13,594	[2] 13,594	[3] 450	150	20	13,594	[1] 450

[1] Observers must be able to monitor at minimum the Level B monitoring zone prior to commencing vibratory pile driving and removal and DTH drilling.
[2] This shutdown zone likely extends beyond the distance that low- and mid-frequency cetaceans can be reliably detected. Observers will monitor this shutdown zone to the maximum extent possible based on the number and location of PSOs deployed and weather conditions.
[3] This shutdown zone likely extends beyond the distance that harbor porpoise can be reliably detected. However, harbor porpoise are uncommon near NKB Manchester, and it is likely that they would engage in aversive behavior prior to experiencing PTS. As such, we do not expect that any porpoise would be present within a Level A harassment zone for sufficient duration to actually experience PTS.

TABLE 13—SHUTDOWN ZONES, YEAR 2

Activity	Pile size/type	Shutdown zones (m)					Level B harassment zone (m)	Level B monitoring zone (m)
		LF	MF	HF	PW	OW		
Impact Installation	12-in Steel	50	50	50	30	10	39.8	N/A
	36-in Steel	650	650	[3] 650	180	25	541.2	N/A
Vibratory Installation or Removal	12-in Steel	1,585	1,585	10	10	10	1,585	[1] 400
	24-in Steel	[2] 5,412	[2] 5,412	15	10	10	5,412	[1] 400
	36-in Steel	[2] 11,659	[2] 11,659	40	20	10	11,659	[1] 400

[1] Observers must be able to monitor at minimum the Level B monitoring zone prior to commencing vibratory pile driving and removal
[2] This shutdown zone likely extends beyond the distance that low- and mid-frequency cetaceans can be reliably detected. Observers will monitor this shutdown zone to the maximum extent possible based on the number and location of deployed PSOs and weather conditions
[3] This shutdown zone likely extends beyond the distance that harbor porpoise can be reliably detected. However, harbor porpoise were notably absent within 21 km^2 in front of NKB Bangor (Rone *et al.,* 2024) and it is likely that they would engage in aversive behavior prior to experiencing PTS. As such, we do not expect that any porpoise would be present within a Level A harassment zone for sufficient duration to actually experience PTS.

Protected Species Observers—The number and placement of PSOs during all construction activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible, except in cases when the shutdown zone is based on the Level B harassment zone (large whales and killer whales). In such cases, PSOs must be able to monitor at minimum the Level A harassment zone. The Navy would employ at least three PSOs for all pile driving and DTH drilling.

Monitoring for Level B Harassment—PSOs would monitor the shutdown zones and beyond to the extent that PSOs can see. Monitoring beyond the shutdown zones enables observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones and thus prepare for a potential cessation of activity should the animal enter the shutdown zone. Additionally, prior to commencing pile driving, PSOs will contact Navy marine biologists or the Orca Network directly to obtain reports of large whales in the area.

In order to document observed incidents of harassment, PSOs record all marine mammal observations, regardless of location. The PSO's location and the location of the pile being driven are known, and the location of the animal may be estimated as a distance from the observer and then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational data, and a precise accounting of observed incidents of harassment created.

Pre and Post-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs will observe the shutdown zone, Level A harassment zone, and Level B harassment zone (to the extent possible based on the number and location of PSOs and weather conditions) for a period of 30 minutes. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones and, during vibratory driving and removal and DTH drilling, the Level B monitoring zone, are clear of marine mammals, If these zones are obscured by fog or poor lighting conditions, in-water construction activity will not be initiated until the entire shutdown zone is visible. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones and, during vibratory driving and removal and DTH drilling, the Level B monitoring zone, are clear of marine mammals. If a marine mammal is observed entering or within these zones, pile driving activity must be delayed or halted. During vibratory driving and removal and DTH, the Navy will shut down upon any observation of large whales and killer whales. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

The Navy also plans to take measures to ensure that killer whales and large cetaceans (*i.e.,* humpback whale, gray whale, and minke whale) are not located within the vicinity of the project area, including, but not limited to, contacting and/or reviewing the latest sightings data from the Orca Network and/or Center for Whale Research, including passive acoustic detections, to determine the location of the nearest marine mammal sightings.

Soft Start—The use of a soft start procedure is believed to provide additional protection to marine mammals by warning marine mammals or providing them with a chance to leave the area prior to the hammer operating at full capacity. The Navy will utilize soft start techniques for impact pile driving. We require an initial set of three strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent three-strike sets. Soft start

will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of 30 minutes or longer; the requirement to implement soft start for impact driving is independent of whether vibratory driving has occurred within the prior 30 minutes. Soft start is not required during vibratory pile driving activities.

Bubble Curtain—A bubble curtain would be used for all impact driving of steel piles to attenuate noise. A bubble curtain would be employed during impact installation or proofing of steel pile where water depths are greater than 2 ft (0.67 m). Bubble curtains are not proposed for installation of other pile types due to the relatively low source levels, as the requirement to deploy the curtain system at each driven pile results in a significantly lower production rate. Where a bubble curtain is used, the contractor would be required to turn it on prior to the soft start in order to flush fish from the area closest to the driven pile.

To avoid loss of attenuation from design and implementation errors, the Navy will require specific bubble curtain design specifications, including testing requirements for air pressure and flow at each manifold ring prior to initial impact hammer use, and a requirement for placement on the substrate. The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact. The contractor shall also train personnel in the proper balancing of air flow to the bubblers, and must submit an inspection/performance report to the Navy for approval within 72 hours following the performance test. Corrections to the noise attenuation device to meet the performance standards shall occur prior to use for impact driving.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring—Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring and Mitigation Plan. Marine mammal monitoring during pile driving and removal and DTH drilling must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor), and have no other assigned tasks during monitoring periods;
- At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute other relevant experience, education (degree in biological science or related field) or training for experience performing the duties of a PSO during construction activities pursuant to a NMFS-issued incidental take authorization;
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator will be designated. The lead observer will be required to have prior experience working as a marine mammal observer during construction activity pursuant to a NMFS-issued incidental take authorization; and
- PSOs must be approved by NMFS prior to beginning any activity subject to each IHA.

PSOs should also have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including, but not limited to, the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was note implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Visual monitoring will be conducted by a minimum of three trained PSOs positioned at suitable vantage points practicable (*e.g.,* from a small boat, the pile driving barge, on shore, piers, or any other suitable location). One PSO will have an unobstructed view of all water within the shutdown zone, and during vibratory pile driving and removal and DTH drilling, the Level B monitoring zone. Remaining PSOs will observe as much as the Level A and Level B harassment zones as possible.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Acoustic Monitoring

The Navy plans to conduct hydroacoustic monitoring for a subset of impact-driven steel piles for projects including more than three piles where a bubble curtain is used (relevant to year 2 project activities only).

Reporting

The Navy will submit a draft marine mammal monitoring report to NMFS within 90 days after the completion of pile driving activities, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal monitoring report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report will include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (1) The number and type of piles that were driven and the method (*e.g.,* impact or vibratory); and (2) Total duration of driving time for each pile (vibratory driving) and number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information: (1) Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; (2) Time of sighting; (3) Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; (4) Distance and location of each observed marine mammal relative to the pile being driven for each sighting; (5) Estimated number of animals (min/max/best estimate); (6) Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); (7) Animal's closest point of approach and estimated time spent within the harassment zone; and (8) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

A final report must be prepared and submitted within 30 calendar days following receipt of any NMFS comments on the draft report. If no comments are received from NMFS within 30 calendar days of receipt of the draft report, the report will be considered final. All PSO data would be submitted electronically in a format that can be queried such as a spreadsheet or database and would be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Holder must report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov* and *itp.fleming@noaa.gov*) and the West Coast Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the Holder must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. The Holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in table 3, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving activities associated with the maintenance projects, as described previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only (for all species other than harbor seal) from underwater sounds generated from pile driving. Potential takes could occur if individual marine mammals are present in the ensonified zone when pile driving is happening.

No serious injury or mortality would be expected even in the absence of the proposed mitigation measures. For all species other than the harbor seal, no Level A harassment is anticipated given the nature of the activities, *i.e.,* much of the anticipated activity would involve measures designed to minimize the possibility of injury. The potential for injury is small for cetaceans and sea lions, and is expected to be essentially eliminated through implementation of the proposed mitigation measures—use of the bubble curtain for steel piles (relevant to year 2 only), soft start (for impact driving), and shutdown zones. Impact driving, as compared with vibratory driving, has source characteristics (short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. Given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to becoming potentially injurious or resulting in more severe behavioral reactions. Additionally, environmental conditions in inland waters are expected to generally be good, with calm sea states, and we expect conditions would allow a high marine mammal detection capability, enabling a high rate of success in implementation of shutdowns to avoid injury.

As described previously, there are multiple species that are considered rare in the proposed project areas and for which we propose to authorize limited take, by Level B harassment, of a single group for a minimal period of time in each authorization year (one or two days).

ESA critical habitat for southern resident killer whale occurs in Puget Sound (see the Description of Marine Mammals in the Area of Specified Activities section of this notice). NMFS did not identify in-water sound levels as a separate essential feature of critical habitat, though anthropogenic sound is recognized as one of the primary threats to SRKW (NMFS 2019). The exposure of SRKW to sound from the proposed activities would be minimized by the required proposed mitigation measures (*e.g.,* shutdown zones equivalent to the Level B harassment zones). The effects of the activities on SRKW habitat generally, such as sedimentation and impacts to availability of prey species, are expected to be limited both spatially and temporally, constrained to the immediate area around the pile driver(s) at each pier and returning to baseline levels quickly. Additionally, the timing of the in-water work window for the projects is intended to limit impacts to ESA-listed fishes, which would accordingly reduce potential impacts to SRKW prey.

Puget Sound is part of a BIA for migrating gray whales (Calambokidis *et al.,* 2015). However, gray whales in this area typically remain further north, primarily in the waters around Whidbey Island (Calambokidis *et al.,* 2018) (an area where only 8 days of pile driving are planned). Therefore, even though the project areas overlap with the BIA, the infrequent occurrence of gray whales suggests that the proposed projects would have minimal, if any, impact on the migration of gray whales, and would therefore not affect reproduction or survival.

Aside from the SRKW critical habitat and BIA for gray whales, there are no known important areas for other marine mammals, such as feeding or pupping areas. Therefore, we do not expect meaningful impacts to these species (*i.e.,* humpback whale, gray whale, minke whale, transient and resident killer whales, Dall's porpoise, and northern elephant seal) and preliminarily find, for both the proposed Year 1 and Year 2 IHAs, that the total marine mammal take from the specified activities will have a negligible impact on these marine mammal species.

For remaining species (harbor porpoise, California sea lion, Steller sea lion, and harbor seal), we discuss the likely effects of the specified activities in greater detail. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving.

The Navy has conducted multi-year activities potentially affecting marine mammals, and typically involving greater or similar levels of activity than is contemplated here in various locations such as San Diego Bay and some of the installations considered herein (NBK Bangor, NBK Bremerton, NBK Manchester). Reporting from these activities has similarly reported no apparently consequential behavioral reactions or long-term effects on marine mammal populations (Lerma, 2014; Navy, 2016; Sandoval *et al.,* 2022; Sandoval and Johnson, 2022; Hamer Environmental 2021; DoN, 2021 and 2022). Repeated exposures of individuals to relatively low levels of sound outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, even repeated Level B harassment of some small subset of the 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. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving and DTH drilling associated with some project components may produce sound at distances of many kms from the pile driving site, thus intruding on higher-quality habitat, the project sites themselves and the majority of sound fields produced by the specified activities are within industrialized areas. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that harbor seals may sustain some limited Level A harassment in the form of auditory injury at two installations in year 1 (NBK Bremerton and NBK Manchester) and one installation in year 2 (NBK Bangor), assuming they remain within a given distance of the pile driving activity for the full number of pile strikes. However, seals in these locations that experience PTS would likely only receive slight PTS, *i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.,* the low-frequency region below 2 kHz, not severe hearing impairment or

impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The pile driving activities are also not expected to have significant adverse effects on these affected marine mammals' habitats. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the specified activities will have only minor, short-term effects on individuals that will not have any bearing on those individuals' fitness. Thus the specified activities are not expected to impact rates of recruitment or survival and will therefore have a negligible impact on those species or stocks.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior;
- The additional impact of PTS of a slight degree to few individual harbor seals at two locations in year 1 and one location in year 2 is not anticipated to increase individual impacts to a point where any population-level impacts might be expected;
- The absence of any significant habitat within the industrialized project areas, including known areas or features of special significance for foraging or reproduction; and
- The presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations from either project;
- The ensonifed areas from both projects are very small relative to the overall habitat ranges of all species and stocks, and will not cause more than minor impacts in any ESA-designated critical habitat, BIAs or any other areas of known biological importance.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity, specific to each of the Year 1 and Year 2 IHAs, will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less 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.

We propose to authorize incidental take of 14 marine mammal stocks each project year (table 11). The total amount of taking proposed for authorization is less than 1 percent for eight of these stocks in year 1 and year 2, equal or less than 10 percent for an additional four stocks in year 1 and three stocks in year 2, and equal or less than 27 percent for another stock in year 1 and three stocks in year 2, all of which we consider relatively small percentages and thus small numbers of marine mammals relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds, for each of the Year 1 and Year 2 IHAs, that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the West Coast Regional Office.

NMFS is proposing to authorize take of SRKW, as well as two DPSs of humpback whale (Central American/Southern Mexico—California—Oregon—Washington and Mainland Mexico—California—Oregon—Washington), which are listed under the ESA.

The NMFS Office of Protected Resources has requested initiation of section 7 consultation with the NMFS West Coast Region for the issuance of these IHAs. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue two consecutive IHAs to the Navy for conducting the NAVFAC NW MPR Project in Puget Sound, Washington between July 2024 and July 2025, and July 2025 and July 2026, provided the previously mentioned mitigation,

monitoring, and reporting requirements are incorporated. Drafts of the proposed IHAs can be found at: *http://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorizations, and any other aspect of this notice of proposed IHAs for the proposed construction project. We also request comment on the potential renewal of these proposed IHAs as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for each IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: April 5, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–07676 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD846]

Spring Meeting of the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas

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

ACTION: Notice of the Advisory Committee 2024 spring meeting.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) announces its annual spring meeting, to be held April 30–May 1, 2024 in Miami, Florida.

DATES: The open sessions of the Committee meeting will be held on April 30, 2024, 8:30 a.m. to 3:45 p.m. and May 1, 2024, 10:15 a.m. to 4 p.m. Closed sessions will be held on April 30, 2024, 4 p.m. to 6 p.m. and on May 1, 2024, 9 a.m. to 10 a.m. All times are Eastern Daylight Savings time.

ADDRESSES: The meeting will be held at the Courtyard by Marriott Miami Coconut Grove, 2649 South Bayshore Drive, Miami, Florida 33133.

FOR FURTHER INFORMATION CONTACT: Bryan Keller, Office of International Affairs, Trade, and Commerce, (301) 427–7725 or at *bryan.keller@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to receive and discuss information on the outcomes of ICCAT's 2023 annual meeting and the U.S. implementation of ICCAT decisions; ICCAT intersessional meetings in 2024; relevant NMFS research and monitoring activities; the results of the meetings of the Committee's Species Working Groups; and other matters relating to the international management of ICCAT species. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment during the meeting. An agenda is available from the Committee's Executive Secretary upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Committee will meet in its Species Working Groups in closed session in the afternoon of April 30, 2024, and in the morning of May 1, 2024. These sessions are not open to the public, but the results of the Species Working Group discussions will be reported to the full Advisory Committee during the Committee's open session on May 1, 2024.

Special Accommodations

The meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to Bryan Keller (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: April 5, 2024.

Alexa Cole,

Director, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service.

[FR Doc. 2024–07616 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD866]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is holding three regional workshops to hear and discuss feedback from the public to inform development of its Atlantic Cod Management Transition Plan. Workshop summaries will be presented at a future Council meeting.

DATES: These meetings will be held between the dates of Tuesday, April 30, 2024, and Thursday, May 2, 2024. See **SUPPLEMENTARY INFORMATION** for more details on specific dates and times.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific addresses.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Ph.D., Executive Director, New

England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

1. *Tuesday, April 30, 2024, from 9:30 a.m.–4 p.m.,* Westin Hotel, 157 High Street, Portland, ME 04101;

2. *Tuesday, May 1, 2024, from 9:30 a.m.–4 p.m.,* Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880;

3. *Wednesday, May 2, 2024, from 9:30 a.m.–4 p.m.,* 20 Hotel Drive, South Kingstown, RI 02879.

Agenda

The Council is holding three regional workshops to identify challenges and develop alternatives for addressing Atlantic cod management considering the new biological stock units. The Council is conducting these workshops to collect important feedback from fishing industry members and other stakeholders. The workshops are a platform for discussions and gathering different perspectives. A summary report of the workshops will be provided to the Council to help inform the development of its Atlantic Cod Management Transition Plan. For more details, see the Council's web page: *https://www.nefmc.org/library/atlantic-cod-management-transition-plan.*

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 8, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–07727 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2024–0013]

Guidance on Use of Artificial Intelligence-Based Tools in Practice Before the United States Patent and Trademark Office

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

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) issues this guidance to inform practitioners and the public of the important issues that patent and trademark professionals, innovators, and entrepreneurs must navigate while using Artificial Intelligence (AI) in matters before the USPTO. The USPTO recognizes the possibility that AI will be used to prepare and prosecute patent and trademark applications, as well as other filings before the Office including filings submitted to the Patent Trial and Appeal Board (PTAB) and Trademark Trial and Appeal Board (TTAB). While the USPTO is committed to maximizing AI's benefits and seeing them distributed broadly across society, the USPTO recognizes the need, through technical mitigations and human governance, to cabin the risks arising from the use of AI in practice before the USPTO. At this time, based on the USPTO's engagement with stakeholders through the USPTO's AI and Emerging Technologies (ET) Partnership (AI/ET Partnership) and a review of existing rules, the USPTO has determined that existing rules protect the USPTO's ecosystem against such potential perils. This guidance reminds individuals involved in proceedings before the USPTO of the pertinent rules and policies, helps inform those same individuals of the risks associated with the use of AI systems, and provides suggestions to mitigate those risks. The USPTO will continue to engage with the public, including through the AI/ET Partnership, as the use of AI advances and evolves.

DATES: This guidance on the use of AI in practicing before the USPTO is applicable as of April 11, 2024.

FOR FURTHER INFORMATION CONTACT: For patent matters contact Matthew Sked, Senior Legal Advisor, at 571–272–7627 or Nalini Mummalaneni, Senior Legal Advisor, at 571–270–1647, both with the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents.

For matters regarding the PTAB contact Michael W. Kim, Vice Chief Administrative Patent Judge, or Charles J. Boudreau, Lead Administrative Patent Judge, at 571–272–9797.

For trademark matters contact Robert J. Lavache, Senior Trademark Legal Policy Advisor, Office of the Deputy Commissioner for Trademark Examination Policy, at 571–272–5881.

For matters regarding the TTAB contact Cheryl A. Butler, Senior Counsel and Editor of the Trademark Board Manual of Procedure, at 571–272–4259.

SUPPLEMENTARY INFORMATION:

I. Background

Recognizing that ''[r]esponsible AI use has the potential to help solve urgent challenges while making our world more prosperous, productive, innovative, and secure,'' while ''[a]t the same time, irresponsible use could exacerbate societal harms such as fraud, discrimination, bias, and disinformation; displace and disempower workers; stifle competition; and pose risks to national security,'' President Biden issued the Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence on October 30, 2023 (''Executive Order'').[1] The Executive Order calls upon the Federal Government to enact and enforce protections as to AI-related harms, including ''in critical fields like healthcare, financial services, education, housing, *law*, and transportation'' (emphasis added), while promoting responsible uses of AI.[2] This notice, which recognizes the ways in which the USPTO's existing protections address AI-related harms, is one of the USPTO's numerous efforts, such as the AI/ET Partnership and the Inventorship Guidance on AI-Assisted Inventions,[3] to address AI considerations at the intersection of innovation, creativity, and intellectual property (IP).

As we see AI being increasingly integrated with and deployed into a variety of sectors including finance, manufacturing, healthcare, and transportation,[4] we also see a growth in the use of AI in the legal field and in practice before the Office. With the advent of large language models and

[1] Executive Order 14110, 88 FR 75191 (November 1, 2023).

[2] *Id* at 75193.

[3] Events for the Artificial Intelligence and Emerging Technologies Partnership, 87 FR 34669 (June 7, 2022); Inventorship Guidance for AI-Assisted Inventions, 89 FR 10043 (February 13, 2024).

[4] ''Inventing AI—Tracing the diffusion of artificial intelligence with U.S. patents,'' (October 2020). Available at *www.uspto.gov/sites/default/files/documents/OCE-DH-AI.pdf.*

generative AI, legal professionals and others who practice before the Office are currently exposed to AI-based solutions that can create content, author legal research memos, perform due diligence analysis, extract legal principles contained in court opinions, and assist in deposition preparation. The ability of AI to analyze massive amounts of data and find patterns that are undetectable to the human eye makes it a valuable asset in the toolkits of examiners, parties, and practitioners. For example, patent examiners are performing AI-enabled prior art searches using features like More Like This Document (MLTD) [5] and Similarity Search [6] in the Office's Patents End-to-End (PE2E) Search tool. Patent practitioners are increasingly relying on AI-based tools to research prior art, automate the patent application review process, and to gain insights into examiner behavior.

These tools have the potential to lower the barriers and costs of practicing before the Office as well as helping law practitioners offer services to their clients with improved quality and efficiency. As the use of AI continues to grow in the IP community, however, it is essential to address the legal and ethical considerations that arise with the use of these technologies. Some of these considerations were discussed in a panel on practitioners' use of AI at the AI/ET Partnership event, ''AI tools and data,'' held at the USPTO on September 27, 2023.[7] Patent practitioners suggested that AI tools have the potential to make prior art searches, claim charting, and document reviews easier while acknowledging that human verification of the outputs of AI tools is necessary. They also discussed confidentiality and ethical issues that may be of concern when using such tools.

Incomplete or inaccurate outputs by AI, which, when not thoroughly verified by parties and practitioners, can also result in critical misstatements and omissions. For example, legal briefs and motions, the preparation of which was assisted by AI, have included fictionalized citations and quotations, resulting in sanctions for the attorneys filing these briefs.[8] Other issues arise from seeking AI assistance by sharing sensitive and confidential client information to third-party AI systems, including those potentially located outside of the United States.[9]

The legal community has recognized the need to identify and explore AI risks in legal proceedings. For example, in the 2023 Year-End Report on the Federal Judiciary, Chief Justice Roberts identified that AI has the potential to ''increase access to key information for lawyers and non-lawyers alike'' but comes with risks such as ''invading privacy interests and dehumanizing the law.'' [10] The American Bar Association (ABA) created the ABA Task Force on Law and Artificial Intelligence to provide the legal community with insights for developing and using AI in a trustworthy and responsible manner.[11] Several federal and state court judges have issued standing orders requiring, for example, certifications by filers that any court filings, or citations, assertions, or analysis therein, generated by AI are verified to be accurate.[12] Following the lead of these judges, courts are beginning to propose local rules to address such issues for all judges on those courts.[13] Recognizing the importance of these issues, on February 6, 2024, the USPTO Director issued guidance (''February 2024 Guidance'') to the PTAB and TTAB to remind those business units about the scope and applicability of existing rules.[14]

Given the uncertainties faced by practitioners in the use of AI tools, the USPTO publishes this guidance to remind practitioners about existing rules and policies that may be relevant to the use of these tools, and to help educate practitioners on possible risks presented by the use of these tools so that practitioners can mitigate these risks. In the event of any conflict between the February 2024 Guidance and this notice, this notice controls.

This guidance is not intended to provide an exhaustive list of possible rules, policies, or issues that may arise with use of AI in matters before the USPTO. As noted above, the USPTO has separately addressed the use of AI before the office when AI is used as part of the inventive process.[15] The USPTO continues to engage with stakeholders through the AI/ET Partnership to seek the public's views on various policy issues that uniquely affect the AI/ET community.[16] The USPTO will continue to study considerations raised by the use of AI within the IP community, including impacts on the integrity and accessibility of the IP system.

This notice is organized as follows: Section II provides an overview of the USPTO's existing rules and policies. Section III describes how these existing rules and policies apply in the context of the use of AI tools in matters before the USPTO. Specifically, section III(A) discusses the use of AI systems in drafting documents for submission to the USPTO. Section III(B) addresses the filing of documents at the USPTO with the assistance of AI tools. Section III(C) discusses USPTO information technology (IT) systems and the appropriate use of AI tools in interacting with those systems. Finally, section III(D) raises confidentiality and national security concerns related to the use of AI systems.

Disclaimer: This guidance does not constitute substantive rulemaking and does not have the force and effect of law. The guidance does not create any right or benefit, substantive or procedural, enforceable by any party against the USPTO. This guidance is not intended to announce any new USPTO practice or procedure and is meant to be consistent with current USPTO policy. However, if any earlier guidance from the USPTO, including any section of the current Manual of Patent Examining Procedure (MPEP), is inconsistent with the guidance set forth in this notice, USPTO personnel are to follow this

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[5] *See* ''New PE2E Search Tool Using AI Search Features,'' 1494 OG 251 (January 11, 2022).

[6] *See* ''New Artificial Intelligence Functionality in PE2E Search,'' 1504 OG 359 (November 15, 2022).

[7] ''AI tools and data'' AI/ET Partnership Series #4, September 2023 (recording available at *https://www.uspto.gov/about-us/events/aiet-partnership-series-4-ai-tools-and-data*).

[8] *See* OPINION AND ORDER ON SANCTIONS at 2, *Mata* v. *Avianca Inc.,* Case No. 22–CV–1461 (S.D.N.Y., June 22, 2023) (lawyers sanctioned for filing a brief that included non-existent citations and quotations that were output by a generative AI system).

[9] *See* Panel Discussion on Practitioners' Evaluation and Use of AI, ''AI tools and data'' AI/ET Partnership Series #4, September 2023 (recording available at *https://www.uspto.gov/about-us/events/aiet-partnership-series-4-ai-tools-and-data*).

[10] 2023 Year-End Report on the Federal Judiciary at 5, available at *www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf* (Dec. 31. 2023).

[11] *See* ABA forms task force to study impact of artificial intelligence on the legal profession, American Bar Ass'n (Aug. 28, 2023), *https://www.americanbar.org/news/abanews/aba-news-archives/2023/08/aba-task-force-impact-of-ai/*.

[12] *See, e.g.,* Standing Order Re: Artificial Intelligence (''AI'') in Cases Assigned to Judge Baylson (E.D. Pa. June 6, 2023), available at *www.paed.uscourts.gov/sites/paed/files/documents/locrules/standord/Standing%20Order%20Re%20Artificial%20Intelligence%206.6.pdf*).

[13] Notice of Proposed Amendment to 5th Cir. R. 32.3, available at *www.ca5.uscourts.gov/docs/default-source/default-document-library/public-comment-local-rule-32-3-and-form-6*.

[14] The February 2024 Guidance is available at *www.uspto.gov/sites/default/files/documents/directorguidance-aiuse-legalproceedings.pdf*.

[15] Inventorship Guidance for AI-Assisted Inventions, 89 FR 10043.

[16] *www.uspto.gov/initiatives/artificial-intelligence/ai-and-emerging-technology-partnership-engagement-and-events*. For more information on the USPTO's work at the intersection of AI and IP, see *https://www.uspto.gov/blog/director/entry/ai-and-inventorship-guidance-incentivizing?utm_campaign=subscriptioncenter&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=*.

guidance. This guidance will be incorporated into the MPEP in due course.

II. The USPTO's Existing Rules and Policies

The USPTO's rules and policies described in this guidance—including those meant to ensure full, fair and accurate disclosure to the USPTO and to protect clients of USPTO practitioners—apply broadly, regardless of any AI assistance in preparing submissions to the USPTO. These broadly applicable rules and policies help mitigate the risks of AI assistance and require practitioners and others to exercise special care when using AI as a tool in connection with USPTO practice.

A. Duty of Candor and Good Faith

Each individual associated with a proceeding at the USPTO (*e.g.,* patent and trademark examination, reexamination, appeal or other proceedings before the PTAB or TTAB) has a duty of candor and good faith in dealing with the Office. For practitioners, these duties are detailed in 37 CFR 11.303 and apply to practice before the USPTO including any USPTO tribunal. Furthermore, other rules may act cumulatively to § 11.303. In patent examination and reissue proceedings, for example, individuals owe the Office a duty of candor and good faith as detailed in 37 CFR 1.56(a), which states in part: ''[e]ach individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section.'' This duty extends to all dealings these individuals have with the USPTO and is not limited to representations or dealings with a patent examiner.[17] Therefore, the duty of candor and good faith covers other interactions associated with a proceeding at the USPTO such as, without limitation, filing a petition to the USPTO Director or filing a response to a pre-examination notice from the Office of Patent Application Processing.

Included within the duty of candor and good faith in patent proceedings is the duty of disclosure. The duty of disclosure requires that each individual identified in 37 CFR 1.56(c) disclose to the USPTO all information known to be material to patentability as defined in 37 CFR 1.56(b). While § 1.56(a) refers to the duty to disclose material information to the USPTO, the duty of candor and good faith is broader.[18] The rule states ''no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct.'' The duty of candor and good faith applies to positions taken by applicants or parties involving the claimed subject matter.[19] It also applies to errors that occur during the course of the proceeding. ''If a party to a USPTO proceeding discovers that an earlier position taken in a submission to the USPTO or another Government agency was incorrect or inconsistent with other statements made by the party, the party must promptly correct the record.'' [20] Under the duty of candor and good faith, any acts of fraud and intentional misconduct are not permitted.

The duty of candor and good faith operates to achieve the important functions of safeguarding the integrity of proceedings before the USPTO and ensuring robust and reliable patents are issued. ''The rules serve to remind individuals associated with the preparation and prosecution of patent applications of their duty of candor and good faith in their dealings with the Office, and will aid the Office in receiving, in a timely manner, the information it needs to carry out effective and efficient examination of patent applications.'' [21] Further, the duty also provides for the efficient resolution of matters by permitting the USPTO to accept certain applicant statements as true without further investigation.[22] Those individuals subject to the duty of candor and good faith should exercise care to avoid any potential negative consequences.[23]

The duty of candor and good faith in patent proceedings extends beyond *ex parte* patent examination and reissue proceedings. In reexamination proceedings and supplemental examination, 37 CFR 1.555(a) states: ''Each individual associated with the patent owner in a reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding.'' When parties and individuals are involved in a proceeding before the PTAB, they are also subject to the duty of candor and good faith pursuant to 37 CFR 42.11. The duty of candor and good faith applies in patent term extension proceedings as well.[24]

As the duty of candor and good faith applies to all conduct before the USPTO, the duty underlies all the discussions on the use of AI systems in matters before the USPTO throughout Section III. However, the duty is explicitly referenced in Section III(A). For example, this section explains that those involved in patent proceedings have a duty to disclose all information—including on the use of AI tools by inventors, parties, and practitioners—that is material to patentability.

B. Signature Requirement and Corresponding Certifications

Generally, all patent correspondence filed in the USPTO must bear a person's signature.[25] By including this signature, the individual inserting the signature or submitting the paper is certifying that the person's signature appearing on the document was actually inserted by that person.[26] In other words, a person, including a practitioner, must insert their own signature on the paper. ''The requirement does not permit one person (*e.g.,* a secretary) to type in the signature

[17] Manual of Patent Examining Procedure (9th Edition, rev. 07.2022, February 2023) (MPEP) 2001.03.

[18] MPEP 2001.04.

[19] *Id.*

[20] *Id* (citing *In re Tendler,* Proceeding No. D2013–17 (USPTO Jan. 1, 2014) (suspending a practitioner for four years for failure to correct the written record after learning of inaccuracies in a declaration the practitioner had filed)); *see also* MPEP 2011 (''When an error is discovered, applicant should take steps to ensure that the error is corrected as soon as possible.'').

[21] *Id.*

[22] *See, e.g.,* MPEP 711.03(C) (''The Office usually relies upon the applicant's duty of candor and good faith and accepts the statement that 'the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137 was unintentional' without requiring further information in the vast majority of petitions under 37 CFR 1.137.''); MPEP 717.02(b) (''The applicant(s) or the representative(s) of record have the best knowledge of the ownership of their application(s) and reference(s), and their statement of such is sufficient because of their paramount obligation of candor and good faith to the USPTO.'').

[23] *See* MPEP 2016.

[24] 37 CFR 1.765(a) (''A duty of candor and good faith toward the Patent and Trademark Office and the Secretary of Health and Human Services or the Secretary of Agriculture rests on the patent owner or its agent, on each attorney or agent who represents the patent owner and on every other individual who is substantively involved on behalf of the patent owner in a patent term extension proceeding.'').

[25] *See* 37 CFR 11.18(a); *see also* 37 CFR 1.33(b); 37 CFR 42.6(a)(4) (''*Signature; identification.* Documents must be signed in accordance with §§ 1.33 and 11.18(a) of this title, and should be identified by the trial number (where known).''); 37 CFR 42.11(b) (''Every petition, response, written motion, and other paper filed in a [PTAB AIA Trial] proceeding must comply with the signature requirements set forth in § 11.18(a) of this chapter.''). Certain patent-related correspondence, including a notice of appeal to the PTAB, are not subject to these signature requirements. *See, e.g.,* 37 CFR 41.31(b).

[26] 37 CFR 1.4(d)(5)(ii).

of a second person (*e.g.,* a practitioner) even if the second person directs the first person to do so.'' [27]

Except for trademark correspondence that is required to be signed by the applicant, registrant or party to a proceeding, each piece of trademark correspondence filed in the Office by a trademark practitioner must bear a signature, personally signed or inserted by such practitioner.[28] This signature may be: (1) a handwritten signature personally signed in permanent ink by the person named as the signatory, or a true copy thereof, or (2) an electronic signature on correspondence filed on paper or through the USPTO's electronic filing systems that meets the requirements of 37 CFR 2.193(c) and is personally entered by the person named as the signatory.

By signing or presenting a piece of correspondence,[29] the party is making a certification under 37 CFR 11.18(b).[30] That section is based upon and includes the same substantive requirements as Rule 11(b) of the Federal Rules of Civil Procedure (2007).[31] Under 37 CFR 11.18(b)(1), the party presenting the paper certifies that ''[a]ll statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or knowingly and willfully makes any false, fictitious, or fraudulent statements or representations, or knowingly and willfully makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001 and any other applicable criminal statute, and violations of the provisions of this section may jeopardize the probative value of the paper.'' In addition to the certification under 37 CFR 11.18(b)(1), 37 CFR 11.18(b)(2) imposes a duty of reasonable inquiry.[32] This duty ensures that ''the paper is not being presented for any improper purpose, the legal contentions are warranted by law, the allegations and other factual contentions have evidentiary support, and the denials of factual contentions are warranted on the evidence.'' [33] The existence and extent of this duty is based on the circumstances known to the party presenting the paper to the USPTO.[34] Failure to inquire when the circumstances warrant it could result in sanctions or other appropriate action.[35]

As will be discussed in Section III(B), below, the signature requirement and corresponding certifications ensure that documents drafted with the assistance of AI systems have been reviewed by a person and that person believes everything in the document is true and not submitted for an improper purpose. This issue is more fully discussed in Section III(B).

C. Confidentiality of Information

Under 37 CFR 11.106(a), ''[a] practitioner shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, the disclosure is permitted by paragraph (b) of this section, or the disclosure is required by paragraph (c) of this section.'' This rule requires practitioners to maintain the confidentiality of client information except in limited circumstances. This rule was amended in 2021 to bring this provision into alignment with the 2012 amendments to the ABA Model Rule 1.6.[36] In particular, 37 CFR 11.106(d) was added, which states: ''[a] practitioner shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.'' Therefore, practitioners must take steps to maintain the confidentiality of their clients' information including reasonable steps to prevent inadvertent and unauthorized disclosure. In addition, the USPTO Rules of Professional Conduct concerning conflicts of interest generally prohibit a practitioner from using information relating to the representation of a client (or a former client) to the disadvantage of that client.[37] Use of AI systems to perform prior art searches, application drafting, etc. may result in the inadvertent disclosure of client-sensitive or confidential information to third parties through the owners of these systems, causing harms to the client.

In light of these considerations, those using AI systems in practicing before the USPTO, such as drafting applications, should be cognizant of the risks and take steps to ensure confidential information is not divulged as discussed in Section III(D).

D. Foreign Filing Licenses and Export Regulations

Patent practitioners must comply with foreign filing license requirements prior to filing any patent application in a foreign country or exporting technical data for purposes related to the preparation, filing or possible filing, and prosecution of a foreign application. In particular, under 37 CFR 5.11(a), ''[a] license from the Commissioner for Patents under 35 U.S.C. 184 [38] is required before filing any application for patent . . . or for the registration of a utility model, industrial design, or model, in a foreign country or in a foreign or international intellectual property authority, . . . if the invention was made in the United States, and: (1) An application on the invention has been filed in the United States less than six months prior to the date on which

[27] MPEP 502.02(subsection II).

[28] 37 CFR 11.18(a).

[29] Presenting a correspondence includes signing, filing, submitting, or later advocating. It is noted that while many of the rules of professional conduct are directed at practitioners, 37 CFR 11.18 applies to anyone presenting a paper, including *pro se* applicants.

[30] 37 CFR 1.4(d)(5)(i); *see also* 37 CFR 42.11(c) (''By presenting to the Board a petition, response, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney, registered practitioner, or unrepresented party attests to compliance with the certification requirements under § 11.18(b)(2) of this chapter.'').

[31] MPEP 410.

[32] 37 CFR 11.18(b)(2) (''To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office; (ii) The other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.'').

[33] MPEP 2002.02.

[34] MPEP 2001.06(e).

[35] *See* 37 CFR 11.18(c); 37 CFR 42.12.

[36] *See* ''Changes to Representation of Others Before the United States Patent and Trademark Office,'' 86 FR 28442 (May 26, 2021).

[37] *See* 37 CFR 11.107–109.

[38] *See* 35 U.S.C. 184(a) (''Filing in Foreign Country. Except when authorized by a license obtained from the Commissioner of Patents a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country. A license shall not be granted with respect to an invention subject to an order issued by the Commissioner of Patents pursuant to section 181 without the concurrence of the head of the departments and the chief officers of the agencies who caused the order to be issued. The license may be granted retroactively where an application has been filed abroad through error and the application does not disclose an invention within the scope of section 181.'').

the application is to be filed; or (2) No application on the invention has been filed in the United States.'' Further, 37 CFR 5.11(b) provides that ''[t]he license from the Commissioner . . . referred to in paragraph (a) . . . would also authorize the export of technical data abroad for purposes related to . . . [t]he preparation, filing or possible filing, and prosecution of a foreign application.'' Under 37 CFR 5.11(c), ''[w]here technical data in the form of a patent application, or in any form, are being exported for purposes related to the preparation, filing or possible filing and prosecution of a foreign application, without the license from the Commissioner for Patents referred to in paragraphs (a) or (b) of this section, or on an invention not made in the United States, the export regulations contained in 22 CFR parts 120 through 130 (International Traffic in Arms Regulations of the Department of State), 15 CFR parts 730 through 774 (Export Administration Regulations of the Bureau of Industry and Security, Department of Commerce), and 10 CFR part 810 (Assistance to Foreign Atomic Energy Activities Regulations of the Department of Energy) must be complied with unless a license is not required because a United States application was on file at the time of export for at least six months without a secrecy order under § 5.2 being placed thereon.''

Practitioners are further reminded, however, that ''[a] foreign filing license from the USPTO does not authorize the exporting of subject matter abroad for the preparation of patent applications to be filed in the United States.'' [39] Rather, ''the export of subject matter abroad pursuant to a license from the USPTO, such as a foreign filing license, is limited to purposes related to the filing of foreign patent applications,'' and ''[a]pplicants who are considering exporting subject matter abroad for the preparation of patent applications to be filed in the United States should contact the Bureau of Industry and Security (BIS) at the Department of Commerce for the appropriate clearances.'' [40] ''The BIS has promulgated the Export Administration Regulations (EAR) governing exports of dual-use commodities, software, and technology, including technical data, which are codified at 15 CFR parts 730 through 774.'' [41] Release of controlled technology to a foreign person may be deemed an export. 15 CFR 734.13(b).[42]

Practitioners must be mindful of these concerns and ensure data is not improperly exported when using AI systems as discussed in Section III(D).

E. USPTO Electronic Systems' Policies

In addition to the requirements set forth above, access to USPTO electronic systems is subject to a number of terms and conditions. Exceeding authorized access or violating those terms and conditions in connection with accessing USPTO electronic systems may result in criminal or civil liability under federal law (including the Computer Fraud and Abuse Act, 18 U.S.C. 1030) and/or state law. In addition, such conduct may result in penalties or sanctions administered by the USPTO.

The USPTO's websites provide access to a rich collection of information and services including online filing for patents and trademarks, fee handling, and search. Some of these services may require the user to create and use a dedicated account. For example, users may use the USPTO patent electronic filing system, Patent Center, to electronically file patent correspondence or view the status of, and documents filed in or associated with, patent applications and proceedings, including appeals to the PTAB with respect to such applications. In order to take advantage of all the capabilities of Patent Center, a user must be a registered user by creating a *USPTO.gov* account and completing the Patent Electronic System Verification Form PTO–2042a including the Patent Electronic Subscriber agreement.[43] The *USPTO.gov* account is exclusive to an individual and it is not permitted to be shared with other users. Even support staff individuals who are sponsored by one or more practitioners must create and use their own individual *USPTO.gov* account. Likewise, users are required to have an active *USPTO.gov* account in order to access the USPTO's Patent Trial and Appeal Case Tracking System (P–TACTS) for filing documents in connection with interferences [44] and inter partes disputes [45] established under the Leahy-Smith America Invents Act (AIA), including inter partes review (IPR), transitional program for covered business method patents (CBM), post grant review (PGR), and derivation (DER) proceedings.[46]

Similarly, trademark applicants and registrants are required to electronically file trademark correspondence through the trademark electronic filing systems. Users can view the status of, and documents filed in or associated with, trademark applications and registrations in the trademark electronic filing systems. In order to take advantage of all trademark electronic systems, a user must be a registered user by creating a *USPTO.gov* account and completing an online or paper-based verification including the Trademark Verified *USPTO.gov* Account Agreement.[47] The *USPTO.gov* account is exclusive to an individual and it is not permitted to be shared with other users.[48] Even support staff individuals who are sponsored by one or more practitioners must create and use their own individual *USPTO.gov* account.[49]

Trademark applicants, registrants, and parties to a proceeding before the TTAB are required to file submissions and correspondence electronically, currently through Electronic System for Trademark Trials and Appeals (ESTTA). 37 CFR 2.126(a).[50]

Additionally, the Terms of Use apply to all USPTO websites, applications, software, and services that are intended for public use on the *USPTO.gov* domain or USPTO-branded mobile applications and social media presences.[51] In other words, the Terms of Use are the policies that all users must abide by when accessing USPTO services. These Terms of Use prohibit the unauthorized access, actions, use, modification, or disclosure of the data contained in the USPTO system or in transit to/from the system.

[39] Scope of Foreign Filing Licenses, 73 FR 42781 (July 23, 2008) (citing MPEP 140 (8th ed., Rev. 5, Aug. 2006)); *See also* MPEP 140 (''Note that the export of subject matter abroad for purposes not related to foreign filing of a patent application or a registration of an industrial design, such as preparing an application in a foreign country for subsequent filing in the USPTO is not covered by any license from the USPTO.'').

[40] *Id.*

[41] *Id.*

[42] *See, e.g.,* ''Legal Framework for Patent Electronic System'' at 28 (October 23, 2019) (available at *www.uspto.gov/sites/default/files/documents/2019LegalFrameworkPES.pdf*) (''A sponsoring practitioner must take reasonable steps to ensure compliance by each sponsored practitioner support person with . . . the restrictions on the export (including deemed export) of technology and software included in patent applications in section 7. If a sponsored practitioner support person is not a U.S. citizen, their access to the technology and software constitutes an export.'').

[43] See MPEP 502.05.

[44] *https://ptacts.uspto.gov/interferences/ui/home.*

[45] *https://ptacts.uspto.gov/ptacts/ui/home.*

[46] *See https://www.uspto.gov/patents/ptab/patent-trial-and-appeal-case-tracking-system-p-tacts.*

[47] ''United States Patent and Trademark Office Trademark Verified *USPTO.gov* Account Agreement'' (October 2023) (available at *https://www.uspto.gov/sites/default/files/documents/TM-verified-account-agreement.pdf*).

[48] *Id.*

[49] *Id.*

[50] *See also* TTAB Manual of Procedure (TBMP) section 110.01.

[51] Terms of Use for USPTO websites (available at *https://www.uspto.gov/terms-use-uspto-websites*).

Further information on USPTO's electronic system policies and how they relate to the use of AI systems in filing documents and accessing USPTO systems can be found in Sections III(B) and (C).

F. Duties Owed to Clients

The USPTO Rules of Professional Conduct require that a practitioner provide competent and diligent representation to a client.[52] The USPTO adopted the competence and diligence rules in 2013 to correspond to ABA Model Rules 1.1 and 1.3, respectively, and guided practitioners to refer to the Comments and Annotations to the ABA Model Rules, as amended through August 2012, for useful information on how to interpret the equivalent USPTO Rules.[53] Under 37 CFR 11.101, a practitioner must have ''the legal, scientific, and technical knowledge, skill, thoroughness and preparation reasonably necessary for the representation.'' [54] Practitioners must keep abreast of the benefits and risks associated with any technology used to handle client matters before the USPTO.[55] The diligence requirement, which corresponds to ABA Model Rule 1.3, states that the practitioner shall act with reasonable diligence in representing a client.[56]

In addition, 37 CFR 11.104 requires a practitioner to ''reasonably consult with the client about the means by which the client's objectives are to be accomplished'' and ''explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.'' A practitioner who supervises the work of other practitioners and non-practitioner assistants in representing a client is responsible for making reasonable efforts to ensure that the practitioners and non-practitioner assistants comply with the professional obligations of the practitioner or the USPTO Rules of Professional Conduct.[57]

When using AI tools, practitioners must ensure they are not violating the duties owed to clients as highlighted in Section III(A). For example, practitioners must have the requisite legal, scientific, and technical knowledge to reasonably represent their client.

III. Application of the Existing Rules as to the Use of AI, Including Generative AI, Before the USPTO

As set forth above, parties and practitioners appearing or practicing before the USPTO (including the PTAB and TTAB), or accessing USPTO electronic resources, are subject to a number of conditions and obligations. Those conditions and obligations readily apply to situations in which the party or practitioner uses AI as a tool, as set forth in the examples below.

A. The Use of Computer Tools for Document Drafting

For years, computer tools have been ubiquitous in document drafting. Word processing software with features such as spelling and grammar check are commonplace in most industries. More recently, word processing software and other computer tools have begun adopting generative AI features that can develop a written document with much less human involvement. For example, recent tools directed to the IP industry include the ability to draft technical specifications, generate responses to Office actions, write and respond to briefs, and even draft patent claims.

The capabilities of these tools continue to grow, and there is no prohibition against using these computer tools in drafting documents for submission to the USPTO. Nor is there a general obligation to disclose to the USPTO the use of such tools.[58] However, and especially absent such an obligation, applicants, registrants, practitioners, parties to proceedings, and others submitting papers to the USPTO are reminded of the related USPTO policies and duties to the Office and clients (if applicable) when using these computer tools. These policies and duties apply in a variety of exemplary contexts.

1. All Submissions and Correspondence With the USPTO

As explained above, nearly all forms of correspondence with the USPTO must be signed. This includes documents that were drafted entirely by AI tools or drafted with the assistance of AI tools. By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, a party (*i.e.,* the person signing, filing, submitting, or later advocating for the paper) certifies under 37 CFR 11.18(b) that all statements to the party's own knowledge are true and that the party performed an inquiry reasonable under the circumstances. In order to obtain the knowledge necessary to make these certifications, the party presenting the paper must have reviewed and verified the paper and its contents.

Accordingly, any paper submitted to the USPTO must be reviewed by the party or parties presenting the paper. Those parties are responsible for the contents therein. Simply relying on the accuracy of an AI tool is not a reasonable inquiry.[59] Therefore, if an AI tool is used in drafting or editing a document, the party must still review its contents and ensure the paper is in accordance with the certifications being made. For example, given the potential for generative AI systems to omit, misstate, or even ''hallucinate'' [60] or ''confabulate'' information, the party or parties presenting the paper must ensure that all statements in the paper are true to their own knowledge and made based on information that is believed to be true. Additionally, the party or parties should also perform an inquiry reasonable under the circumstances confirming all facts presented in the paper have or are likely to have evidentiary support and confirming the accuracy of all citations to case law and other references. This review must also ensure that all arguments and legal contentions are warranted by existing law, a nonfrivolous argument for the extension of existing law, or the establishment of new law. For example, if an AI system is used to draft a portion of a response to an examiner Office action, the party should review the response, including checking the accuracy of the citations and ensuring the arguments are legally warranted. Further, practitioners and others involved in a matter before the USPTO may be required to disclose certain known facts to the USPTO under their duty of candor and good faith. For example, in patents and patent applications, all patent claims must have a significant contribution by a human inventor. Thus, if an AI system is used to draft patent claims that are submitted for examination, but an individual listed in 37 CFR 1.56(c) has knowledge that one or more of the claims did not have a significant contribution by a human inventor, that

[52] *See* 37 CFR 11.101, 11.103.

[53] *See* Changes to Representation of Others Before The United States Patent and Trademark Office, 78 FR 28445 (2013).

[54] 37 CFR 11.101.

[55] *See* Model Code of Prof'l Conduct r. 1.1, cmt. (Am. Bar Ass'n 2012) (''To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology . . .'').

[56] *See* 37 CFR 11.103.

[57] *See* 37 CFR 11.501–503.

[58] A duty to disclose the use of such tools is implicated when the use rises to the level of materiality under 37 CFR 1.56(b).

[59] *See* Opinion and Order on Sanctions at 2, *Mata* v. *Avianca Inc.,* Case No. 22–CV–1461 (S.D.N.Y., July 7, 2023).

[60] An AI hallucination, or sometimes referred to as ''confabulation,'' is a phenomenon where the AI tool outputs inaccurate or nonexistent information.

information must be disclosed to the USPTO.[61]

Upon review of the document drafted with the assistance of an AI tool, any errors or omissions in the document must be corrected. Filing a paper with the USPTO that includes erroneous facts, arguments, or authorities would not be in compliance with 37 CFR 11.18(b). Similarly, filing a paper with known material omissions in not accordance with the duty of candor and good faith. Violations of 37 CFR 11.18 could include striking the offending paper, referring the practitioner's conduct to the Director of the Office of Enrollment and Discipline, or terminating the proceedings in the Office.[62] Additionally, practitioners are prohibited under 37 CFR 11.301[63] from bringing or defending a proceeding, or asserting or controverting an issue therein, unless there is a basis in law or fact for doing so.[64]

While those parties presenting a paper to the USPTO are under a duty to review the information in the paper and correct any errors, there is not presently a general duty to inform the USPTO that an AI tool was used in the drafting of the paper unless specifically requested by the USPTO.[65] However, practitioners must competently represent their clients.[66] That is, they must have the requisite legal, scientific, and technical knowledge to reasonably represent their client.

In addition, under 37 CFR 11.104(a)(2), practitioners must reasonably consult with the client about the means by which their clients' objectives are to be accomplished.[67]

2. Additional Examples in the Patent Context

While there is no per se requirement to notify the USPTO when AI tools are used in the invention creation process or practicing before the USPTO, applicants and practitioners should be mindful of their duty of disclosure. This is, if the use of an AI tool is material to patentability as defined in 37 CFR 1.56(b), the use of such AI tool must be disclosed to the USPTO. For example, as discussed in more detail in the Inventorship Guidance for AI-Assisted Inventions, material information could include evidence that a named inventor did not significantly contribute to the invention because the person's purported contributions were made by an AI system.[68] This could occur where an AI system assists in the drafting of the patent application and introduces alternative embodiments which the inventor(s) did not conceive and applicant seeks to patent. If there is a question as to whether there was at least one named inventor who significantly contributed to a claimed invention developed with the assistance of AI, information regarding the interaction with the AI system (*e.g.,* the inputs/outputs of the AI system) could be material and, if so, should be submitted to the USPTO.[69]

Practitioners are also under a duty to refrain from filing or prosecuting patent claims that are known to be unpatentable. Therefore, in situations where an AI tool is used to draft patent claims, the practitioner is under a duty to modify those claims as needed to present them in patentable form before submitting them to the USPTO. In situations where the specification and/or drawings of the patent application are drafted using AI tools, practitioners need to take extra care to verify the technical accuracy of the documents and compliance with 35 U.S.C. 112. Also, when AI tools are used to produce or draft prophetic examples, appropriate care should be taken to assist the readers in differentiating these examples from actual working examples.[70] This should be done before initial filing with the USPTO because amending the specification and/or drawings after the initial submission may constitute new matter.[71] Care should be taken to ensure that the disclosures of foreign or international patent applications drafted using AI tools, to which the U.S. patent application claims priority, are technically accurate to avoid loss of priority due to the filing of amendments to correct technical errors in the U.S. application.

When AI systems are relied upon to draft or modify claims, such drafts or changes could impact inventorship or patentability (*e.g.,* 35 U.S.C. 112(a)). For example, when AI makes contributions to drafting portions of the specification and/or claims (*e.g.,* introducing alternate embodiments not contemplated by the inventor(s)), it is appropriate to assess whether the contributions made by natural persons rise to the level of inventorship, in accordance with the law and recent USPTO guidance.[72] In particular, each named inventor must have significantly contributed to a claimed invention of the application as described by the *Pannu* factors.[73] Therefore, practitioners should carefully reevaluate that the appropriate inventors are listed on the patent application. It is particularly important for a practitioner to review applications prepared with the assistance of AI, before filing, to see that information is not incorrectly or incompletely characterized.

AI systems could also be used in the submission of evidence of patentability or unpatentability (*e.g.,* evidence of secondary considerations). Though AI may be used to identify evidence or even draft affidavits, petitions, responses to Office actions, etc., practitioners are required to verify the accuracy of factual assertions, both technical and legal, and ensure that all documents, including those prepared with the assistance of AI, do not introduce inaccurate statements and evidence into the record, either inadvertently or intentionally, or omit information that is material to patentability.

Additionally, AI may be used to automatically populate the USPTO's PTO/SB/08 form (Information Disclosure Statement (IDS) form) with citations for submission to the USPTO, and may be used to collect prior art references in the first place.[74] While AI could be attractive to some patent applicants and practitioners, the unchecked use of AI poses the danger of increasing the number and size of IDS submissions to the USPTO, which could

[61] 37 CFR 1.56(a); *See also* Inventorship Guidance for AI-Assisted Inventions, 89 FR at 10049.

[62] *See* 37 CFR 11.18(c).

[63] ''A practitioner shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law.''

[64] *See also* 37 CFR 11.303(a).

[65] *See, e.g.,* 37 CFR 1.105, 11.52.

[66] *See* 37 CFR 11.101.

[67] 37 CFR 11.102(a) (''Subject to paragraphs (c) and (d) of this section, a practitioner shall abide by a client's decisions concerning the objectives of representation and, as required by § 11.104, shall consult with the client as to the means by which they are to be pursued. A practitioner may take such action on behalf of the client as is impliedly authorized to carry out the representation. A practitioner shall abide by a client's decision whether to settle a matter.'').

[68] Inventorship Guidance for AI-Assisted Inventions, 89 FR at 10049.

[69] MPEP 2004 (citing *U.S. Industries* v. *Norton Co.,* 210 USPQ 94, 107 (N.D. N.Y. 1980)) (''[i]n short, the question of relevancy *in close cases,* should be left to the examiner and not the applicant.''). (emphasis added)

[70] *See* MPEP 2164.02 (''The claims should be drafted in a manner that assists readers in differentiating between actual working examples and prophetic examples (*i.e.,* prophetic examples should not be described using the past tense, but rather in future or present tense)''); MPEP 2004 (item 8).

[71] *See* MPEP 608.04(a).

[72] Inventorship Guidance for AI-Assisted Inventions, 89 FR 10043.

[73] *Id* at 10047.

[74] *See e.g.,* Juristat IDS, available at *www.resources.juristat.com/information-disclosure-statement;* ClaimMaster, available at *www.patentclaimmaster.com/blog/filling-out-ids-forms-with-claimmaster.*

burden the Office with large numbers of cumulative and irrelevant submissions. First, 37 CFR 1.4(d) requires a natural person to personally sign or insert their signature on the IDS. By signing, that person is certifying that they have performed a reasonable inquiry—including not just reviewing the IDS form but reviewing each piece of prior art listed on the form—and determined the paper is compliant with 37 CFR 11.18(b). Regardless of where prior art is found, submitting an IDS without reviewing the contents may be a violation of 37 CFR 11.18(b). After the contents have been reviewed, clearly irrelevant and marginally pertinent cumulative information to the instant proceeding should be removed to avoid violating 37 CFR 11.18 by overburdening the examiner with a large amount of irrelevant information.[75] Including such information in an IDS could be construed as a paper presented for an improper purpose because it could ''cause unnecessary delay or needless increase in the cost of any proceeding before the Office.'' [76] Similarly, third-party preissuance submissions under 37 CFR 1.290 must also be signed by a natural person and, therefore, implicate the certifications under 37 CFR 11.18(b).

The duty of disclosure applies to the individuals identified in 37 CFR 1.56(c). This duty cannot be transferred to another person or a computer system such as an AI tool. Therefore, it is the § 1.56(c) individuals who must ensure that all material information is submitted to the USPTO. Therefore, IDSs should also be reviewed to ensure that all material information is disclosed to prevent material information from being unknowingly omitted.

3. Additional Examples in the Trademark Context

Trademark and TTAB submissions generated or assisted by AI must be carefully reviewed prior to filing to ensure that the facts and statements provided are true and have appropriate evidentiary support, consistent with the requirements of 37 CFR 11.18(b). This includes any information or evidence provided in trademark applications, registration maintenance filings, and TTAB proceedings, as well as legal arguments and citations made in response to refusals and requirements in Office actions or in briefs before the TTAB, whether in appeals or trial cases. Particular care should be taken to avoid submitting any AI-generated specimens, which do not show actual use of the trademark in commerce, or any other evidence created by AI that does not actually exist in the marketplace. In addition, AI-generated material that misstates facts or law, includes irrelevant material, or includes unnecessarily cumulative material, could be construed as a paper presented for an improper purpose because it could ''cause unnecessary delay or needless increase in the cost of any proceeding before the Office.'' [77]

B. Filing Documents With the USPTO

Beyond assisting with the preparation of documents, AI tools could be used to assist or automate the mechanical aspects of filing documents with the USPTO. For example, these tools could potentially autocomplete USPTO forms, access information on USPTO websites, and upload documents and other information to USPTO servers. Care should be taken by persons using such tools to ensure USPTO rules and policies are not violated.

As previously explained, nearly all forms of correspondence filed with the USPTO must bear a signature.[78] This must be the signature of a ''person.'' [79] It would not be acceptable for the correspondence to have the signature of an AI tool or other non-natural person.[80] The signer must insert their signature in accordance with 37 CFR 1.4(d) and 2.193(c).[81] The signer of the document cannot delegate this act to another person or entity. Thus, it is not compliant with the rules to have the AI tool apply the signature of a person without being personally entered by that person.[82] This requirement ensures that natural persons are overseeing the submissions to the USPTO and ensuring they are compliant with USPTO rules and policies.

Another issue practitioners and others should consider when using AI tools to submit papers to the USPTO is the USPTO's policies regarding electronic filing, websites, and other services. For example, in order to submit papers to the USPTO through the Patent Center, Trademark Electronic Application System (TEAS), P–TACTS, or other USPTO electronic systems, a user should obtain a *USPTO.gov* account.[83] Because obtaining a *USPTO.gov* account requires individual agreement to the Terms of Use for USPTO websites, the USPTO Patent Electronic System Subscriber Agreement (as applicable), and the Trademark Verified *USPTO.gov* Account Agreement (as applicable), *USPTO.gov* accounts are limited to natural persons and cannot be obtained by non-natural persons. Therefore, AI systems may not obtain a *USPTO.gov* account. Further, practitioners may not sponsor AI tools as a support staff individual to obtain an account.

C. Accessing USPTO IT Systems

While AI tools have the capabilities to access and interact with USPTO IT systems, attention should be paid to ensure the use of these tools does not run afoul of federal and state law, and USPTO regulations and policies. One important policy to note is the requirement that users must not file documents or access information for which they do not have authorization.[84] In order to be authorized, a user must be the applicant, registrant, party to a proceeding, inventor, third party (who may submit some papers such as third-party submissions via a dedicated interface), a practitioner of record, a practitioner acting in representative capacity pursuant to 37 CFR 1.34, or a sponsored support staff individual.[85] Further, in addition to being authorized, only registered users may file follow-on documents in applications. An AI system or tool is not considered a ''user'' for filing and/or accessing documents via the USPTO's electronic filing systems, and as such, cannot obtain a *USPTO.gov* account. If a person is using a computer tool, including an AI system, to assist in submitting documentation to the USPTO, that person is responsible for ensuring that computer tool does not exceed

[75] *See* MPEP 2004 (advising parties to ''[e]liminate clearly irrelevant and marginally pertinent cumulative information'').

[76] 37 CFR 11.18(b)(2)(i).

[77] 37 CFR 11.18(b)(2)(i) and (iii).

[78] 37 CFR 1.4(d)(1) and 2.193(a).

[79] *Id.; see also* 37 CFR 11.18(a) (''For all documents filed in the Office in patent, trademark, and other non-patent matters, and all documents filed with a hearing officer in a disciplinary proceeding, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Office must bear a signature, personally signed or inserted by such practitioner, in compliance with § 1.4(d) or § 2.193(a) of this chapter.'').

[80] ''Non-natural person'' used herein refers to those entities who would not qualify as a natural person under the law (*e.g.* sovereigns, corporations, or machines).

[81] *See, e.g.,* MPEP 502.02; TMEP 611.

[82] 37 CFR 1.4(d)(2)(i).

[83] Some submissions, such as an initial filed patent application, do not require a *USPTO.gov* account.

[84] Legal Framework for Patents Electronic Systems at 6 (''No user, whether registered or unregistered, is permitted to file documents in applications, reexamination proceedings, or supplemental examination proceedings in which they are not authorized.''); Trademark Verified *USPTO.gov* Account Agreement at 2 (''I understand that my use of a trademark verified *USPTO.gov* account is . . . further limited to use in connection with applications and/or registrations I am authorized to access. I understand that any other use is strictly prohibited.'').

[85] *See, e.g.,* Legal Framework for Patents Electronic Systems at 2, 6, and 26.

authorized access, including submitting or accessing papers in an application that the person does not have authorization to access. Violations of the Legal Framework for Patent Electronic System, Trademark Verified *USPTO.gov* Account Agreement, Terms of Use for USPTO websites, or other applicable policies may lead to revocation of the user's *USPTO.gov* account, in addition to criminal, civil, and/or administrative action and penalties as previously described.[86]

Users should also be extremely careful when attempting to data mine information from USPTO databases. Using computer tools, including AI systems, in a manner that generates unusually high numbers of database accesses violates the Terms of Use for USPTO websites, and users using tools in this way will be denied access to USPTO servers without notice and could be subject to applicable state criminal and civil laws.[87] Instead, users should consider using the USPTO's bulk data products for permitted and appropriate data mining efforts.[88]

D. Confidentiality and National Security Considerations

Use of AI in practice before the USPTO can result in the inadvertent disclosure of client-sensitive or confidential information, including highly-sensitive technical information, to third parties. This can happen, for example, when aspects of an invention are input into AI systems to perform prior art searches or generate drafts of specification, claims, or responses to Office actions. AI systems may retain the information that is entered by users. This information can be used in a variety of ways by the owner of the AI system including using the data to further train its AI models or providing the data to third parties in breach of practitioners' confidentiality obligations to their clients under, *inter alia,* 37 CFR 11.106. If confidential information is used to train AI, that confidential information or some parts of it may filter into outputs from the AI system provided to others.

When practitioners rely on the services of a third party to develop a proprietary AI tool, store client data on third-party storage, or purchase a commercially available AI tool, practitioners must be especially vigilant to ensure that confidentiality of client data is maintained. Practitioners who supervise the work of other practitioners and non-practitioner assistants must ensure that the practitioners and staff under their supervision comply with the USPTO Rules of Professional Conduct when relying on AI tools and/or AI-related third party services.[89]

Such disclosures can also implicate national security, export control, and foreign filing license issues.[90] Specifically, practitioners must be mindful of the possibility that AI tools may utilize servers located outside the United States, raising the likelihood that any data entered into such tools may be exported outside of the United States, potentially in violation of existing export administration and national security regulations or secrecy orders. Even if the servers are located within the United States, certain activities related to the use of AI systems hosted by these servers by non-U.S. persons may be deemed an export subject to these regulations.[91] Moreover, AI system developers or maintainers may suffer data breaches, further subjecting user data to disclosure risks. Therefore, before using these AI tools, it is imperative for practitioners to understand an AI tool's terms of use, privacy policies, and cybersecurity practices.

E. Fraud and Intentional Misconduct

The USPTO does not tolerate fraud or intentional misconduct in any manner in a proceeding before the Office or in connection with accessing USPTO IT systems. As explained above, all individuals associated with a proceeding before the USPTO have a duty of candor and good faith. The duty extends not only to the personal actions of these individuals, but also to the actions these individuals take with any automated tools, including AI tools. Additionally, the use of AI tools on USPTO websites for the ''[u]nauthorized access, actions, use, modification, or disclosure of the data contained herein or in transit to/from [USPTO web systems] constitutes a violation of the Computer Fraud and Abuse Act.'' [92] The USPTO monitors network traffic to identify such behaviors. As previously discussed, violators are subject to criminal, civil, and/or administrative action and penalties.

IV. Conclusion

This guidance on the use of AI Before the Office is not meant to be exhaustive. Those appearing before the USPTO or accessing its systems are reminded to comply with the laws, regulations, precedent, and guidance in force at the time of their dealings with the USPTO.

Katherine K. Vidal,

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

[FR Doc. 2024–07629 Filed 4–10–24; 8:45 am]

BILLING CODE 3510–16–P

[86] *Id* at 28; Trademark Verified *USPTO.gov* Account Agreement at 7–8; Terms of Use for USPTO websites.

[87] Terms of Use for USPTO websites.

[88] Available at *www.uspto.gov/learning-and-resources/bulk-data-products.*

[89] *See* 37 CFR 11.501–503.

[90] *See, e.g.,* 37 CFR 5.11; Scope of Foreign Filing Licenses, 73 FR 42781 (July 23, 2008); Bureau of Industry and Security Online Training Room (available at *www.bis.doc.gov/index.php/online-training-room*).

[91] *See, e.g.,* 15 CFR 734.13.

[92] Terms of Use for USPTO websites.

DEPARTMENT OF DEFENSE

Office of the Secretary

Modification To Childbirth Support Services Covered Under the TRICARE Childbirth and Breastfeeding Support Demonstration

AGENCY: Department of Defense.

ACTION: Notice of demonstration modifications.

SUMMARY: The Director of the Defense Health Agency (DHA) is notifying the public of adjustments to the reimbursement and provider qualifications for childbirth support services under the Childbirth and Breastfeeding Support Demonstration (CBSD).

DATES: The Phase 2 changes will be fully implemented by January 1, 2025, with a transition period starting June 10, 2024. The two modifications to the certified labor doulas (CLD) certification requirement are effective April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Erica Ferron, 303–676–3626, *erica.c.ferron.civ@health.mil.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 746 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year (FY) 2021 (NDAA FY 2021) directed the Secretary of Defense to establish a five-year demonstration project under TRICARE to evaluate the cost, quality of care, and impact on maternal and fetal outcomes of covering the services of doulas and lactation consultants or counselors not otherwise TRICARE-authorized, and to determine whether it would be appropriate to implement permanent coverage. Section 746 also required the Secretary to conduct a maternity survey.

This demonstration was implemented as the CBSD, with details announced in a **Federal Register** notice (FRN)

published by the Assistant Secretary of Defense for Health Affairs (ASD(HA)) on October 29, 2021 (86 FR 60006). The FRN prescribed the qualifications for the three extra medical maternal health providers (CLDs, certified lactation consultants, and certified lactation counselors), the number and type of services to be reimbursed, and the reimbursement rates for the services. The demonstration began on January 1, 2022, in the United States under the two Managed Care Support Contractors (MCSCs), with overseas expansion planned for January 1, 2025. The ASD(HA) later delegated to the Director, DHA, the authority to modify requirements established in that FRN. The Director, DHA, announces such modifications in this FRN.

B. Childbirth Support Services Phase 2 and Transition Period

This FRN announces a second iteration of certain components of childbirth support services under the CBSD. This new phase will include a new reimbursement methodology, new doula-specific codes, increased flexibility for antepartum and postpartum visits, and a new requirement for CLDs to be participating providers. Phase 2 will be fully implemented by January 1, 2025, with a transition period during which services will be reimbursed under the existing (Phase 1) requirements. Each component of the new phase and the transition are discussed in full in this notice.

1. Establishment of a Reimbursement Methodology for Childbirth Support Services

The first component of the new phase of childbirth support services announced in this FRN is the establishment of a reimbursement methodology that will replace the current reimbursement amounts. The methodology is as follows:

(1) TRICARE will identify state Medicaid rates for states reimbursing for doula services.

(2) TRICARE will identify an appropriate Medicaid-to-Medicare Fee Index for obstetrical services for each state reimbursing for Medicaid services.

(3) The state Medicaid rates will be multiplied by the Fee Index.

(4) A weighted average will be created based on the number of TRICARE reimbursed deliveries that occur in each state with a Medicaid program that reimburses for doula services. This weighted average will be the national reimbursement rate for CLDs under the CBSD.

Using this methodology, the DHA anticipates that the calendar year (CY) 2024 rate for antepartum and postpartum visits (60 minutes) will be approximately $107.00 per visit and $957.00 for continuous labor support. This national rate will then be adjusted by locality using the Medicare Geographic Adjustment Factor. The national rate will be recalculated annually based on Medicaid program rates and current Medicaid-to-Medicare fee indexes along with the CHAMPUS Maximum Allowable Charge (CMAC) update published each year by March 1 (available at *https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/TRICARE-Health-Plan/Rates-and-Reimbursement*). The new rates for CY 2024 will be published by the start of the transition for Phase 2. For CY 2024, the national rate for all covered childbirth support services will be about $550.00 more per TRICARE beneficiary than under the current rates. Because this methodology is based on Medicaid rates, it may go up or down each year as new state Medicaid agencies bring doula services online or adjust their reimbursement amounts. The TRICARE rate is designed to be higher than the state Medicaid rates at the national level, though it may be lower in individual states with higher Medicaid reimbursement rates.

2. New Billing Codes

As part of Phase 2, the DHA intends to implement new, doula service-specific codes to replace the current general maternity and home health codes. The new codes, which will be announced in the TRICARE manuals, will be tied to the new reimbursement rates while the existing, Phase 1 codes, will remain linked to the Phase 1 rates until the transition is completed.

3. Increased Flexibility for Antepartum and Postpartum Visits

The third component of the Phase 2 changes is a modification to how antepartum and postpartum support visits will be billed and paid. Currently these visits are untimed, with six visits authorized. This FRN announces that the DHA is switching to timed visits, with visits billed per 15-minute increment, with each beneficiary allowed up to 24 15-minute increments (each 15-minute increment would be reimbursable at about $26.75 in CY 2024). This will allow the beneficiary and their doula to select the most appropriate use of their visit allowance. For example, a beneficiary might choose a 90-minute initial antepartum visit (six increments), a two-and-a-half-hour initial postpartum visit (ten increments), and two 60-minute postpartum visits (eight increments). The new billing codes, discussed above, will be billed per 15-minute increment for visits. The DHA will publish coding guidance for doulas in the implementing instructions in the TRICARE manuals found at *manuals.health.mil.*

4. Requirement for CLDs To Be Participating Providers

The final adjustment that DHA is making as part of Phase 2 is adding a requirement that all CLDs under the CBSD must be a participating provider under TRICARE. Under this requirement, CLDs will be required to file claims and to accept the TRICARE reimbursement rate as payment in full, as well as meet all other requirements as a TRICARE-participating provider.

5. Transition Period From Phase 1 to Phase 2

The changes above will be fully effective on January 1, 2025, with a transition period from June 10, 2024 until January 1, 2025. During the transition period, CLDs can opt to perform services under Phase 1 or Phase 2. CLDs who are non-participating will be eligible to continue to render services under the CBSD through the end of the transition period using Phase 1 common procedural terminology codes and billing rules, and to receive Phase 1 reimbursement rates. Similarly, during the transition, beneficiaries will be able to file for reimbursement for services received from non-participating providers under Phase 1 requirements. Non-participating providers will be ineligible for reimbursement of services rendered on or after January 1, 2025, even if the non-participating provider has entered into an agreement with a beneficiary, and/or their doula benefit has not yet been exhausted. For example, if a non-participating provider renders antepartum visits in late December 2024, those may be reimbursed; however, if the beneficiary experiences labor on January 2, 2025, the continuous labor support charges will be denied unless the provider becomes a participating provider.

CLDs who are already participating providers (network or non-network) when the transition period begins or who execute a participation agreement before the end of the transition period will be eligible to begin using the new codes and to receive the new reimbursement rates. This eligibility will begin either on the start of the transition period or the date the participation agreement is signed, whichever is later.

Any antepartum or postpartum visits performed under Phase 1 requirements will count as 4 15-minute increments against the beneficiary's 24 visit allowance under Phase 2.

Example: A beneficiary received an initial antepartum visit prior to the start of the transition period, followed by another antepartum visit after the transition period began from a non-participating CLD. The beneficiary's CLD then signs a participation agreement, after which time the beneficiary gives birth. The initial two antepartum visits would be reimbursed under Phase 1 rules and would count as 8 15-minute increments against the beneficiary's 24 increment allowance (4 increments for each visit). The labor support would be reimbursed under Phase 2 rules. After delivery, the beneficiary would have 16 15-minute increments remaining to use in the postpartum period, in any configuration (e.g., one 4-hour visit, two 2-hour visits, four 1-hour visits).

The DHA notes that it will take several months for the TRICARE's contractors to implement the new billing codes, during which time claims processing under Phase 2 may be delayed.

C. Adjustments to CLD Certification Requirements

Separate from the Phase 2 changes discussed above, the Director is also announcing that one new certification body will be accepted for CLDs under the CBSD: the National Black Doula Association (NBDA). The DHA made this decision based on analysis of publicly available information for the approximately 47 certification and training bodies recognized by the state Medicaid programs (not already approved under the CBSD) using the criteria discussed in the FRN that published on October 29, 2021. The criteria we discussed in that FRN required that the bodies selected for inclusion had to have a time-limited certification and be well-established with a wide-ranging footprint (*i.e.,* national or international); included classroom training and workshops in labor physiology and other childbirth topics; required doulas to have completed at least two deliveries prior to certification; required evaluations from health care professionals for services provided during labor support or a comprehensive examination; and had an established scope of practice, code of ethics, code of conduct, or similar by which the doula is required to agree to abide.

The Director, DHA, also announces in this FRN that the certification requirement for doulas practicing in a state with an active state-wide doula Medicaid benefit will be waived when that doula is actively enrolled in that state Medicaid program and provides evidence of such an enrollment (the doula must be practicing in the state in which they hold a Medicaid enrollment). To be eligible, the Medicaid program must be a state-wide program with requirements set by the state Medicaid agency. Medicaid programs of limited duration (pilot/demonstration programs) and programs where a contractor (for example, a managed care organization or accountable care organization) sets the provider requirements do not meet these criteria. All other TRICARE CLD requirements will continue to be in effect (age, education, experience, cardiopulmonary resuscitation certification, and possession of a national provider identification number). The various statewide programs have different and varying requirements, and so this demonstration is testing the impact of those programs on provider quality and availability. This may impact the DHA's provider requirements if a permanent benefit is established. The TRICARE program is a uniform benefit, but because this is a demonstration, we are allowing some variability between the states so that we can test the impact of these differences on provider quality, availability, and other outcomes.

E. Cost

The modifications in this FRN are not anticipated to increase the overall cost of the CBSD above the $51.16M for health care and administrative costs that were announced in the 2021 FRN.

Dated: April 8, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–07705 Filed 4–10–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Navy

Department of the Navy Science and Technology Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Navy (DoN), Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Department of the Navy Science and Technology Board (DON S&T Board) will take place.

DATES: A closed meeting will be held on April 30 to May 1, 2024 from 8:00 a.m. to 5:00 p.m. Eastern Standard Time (EST). A closed meeting is required because the discussions will involve classified national security matters and technical processes.

ADDRESSES: The closed meeting will be held at the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Proestou, Designated Federal Officer (DFO), Office of the Assistant Secretary of the Navy (Research, Development & Acquisition), Pentagon, Washington, DC 20350–1000, 703–692–8278, *donstb.fct@navy.mil.*

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5 U.S.C. (commonly known as the Federal Advisory Committee Act (FACA), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), title 41 Code of Federal Regulations (CFR) 102–3.140 and 102–3.150 and covered by 5 U.S.C. 552b(c) (l).

Purpose of the Meeting: The purpose of the meeting will be to brief Navy and Marine Corps operational leadership on opportunities to expand warfighting advantage through technologies that have the potential to disrupt the nature of warfighting. The Board members will conduct classified interviews with subject matter experts to support the Board's tasking. Leveraging information gathered, the Board will assess work in progress to develop practical recommendations in support of SECNAV tasking.

Agenda: On April 30 to May 1, 2024, the DON S&T Board will meet at the Pentagon to vote on recommendations for the Secretary of the Navy and have out-brief discussions with Department of the Navy and Marine Corps leadership. There will be classified discussions on strategy and relevant topics previously tasked by the Secretary of the Navy.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the meeting from April 30 to May 1, 2024, as well as supporting documents, can be found on the website: *https://www.facadatabase.gov.*

Meeting Accessibility: Pursuant to section 552b(c) (l) of 5 U.S.C., this meeting will be closed to the public. If there are any questions or concerns, please send them to *donstb.fct@navy.mil* no later than, April 23, 2024.

Written Statements: Pursuant to 41 CFR 102–3.105 and 102–3.140, and

section 1009(a)(3) of title 5 U.S.C., written statements to the committee may be submitted at any time or in response to a stated planned meeting agenda by email to *donstb.fct@navy.mil* with the subject line, ''Comments for DON STB Meeting.''

Dated: April 8, 2024.

J.E. Koningisor,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2024–07653 Filed 4–10–24; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board (EM SSAB)

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and in accordance with title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Site-Specific Advisory Board (EM SSAB or Board) will be renewed for a two-year period beginning April 8, 2024.

SUPPLEMENTARY INFORMATION: The Board provides the Assistant Secretary for Environmental Management (EM) with information, advice, and recommendations concerning issues affecting the EM program at various sites. These site-specific issues include, but are not limited to, clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship; and risk assessment and communications.

Additionally, the renewal of the Board has been determined to be essential to conduct DOE's business and to be in the public interest in connection with the performance of duties imposed on the DOE by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Kelly Snyder, EM SSAB Designated Federal Officer, by Phone: (702) 918–6715 or Email: *kelly.snyder@em.doe.gov.*

Signing Authority

This document of the Department of Energy (DOE) was signed on April 5, 2024, by Sarah E. Butler, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 5, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–07652 Filed 4–10–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1697–000]

AES Westwing II ES, 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 AES Westwing II ES, 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 April 25, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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

Dated: April 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07734 Filed 4–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2288–057]

Central Rivers Power, NH LLC; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Gorham Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Draft Environmental Assessment (DEA) for the project. No federal land is occupied by project works or located within the project boundary.

The DEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the DEA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2288–057.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: April 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07730 Filed 4–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2287–053]

Central Rivers Power, NH LLC; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the J. Brodie Smith Hydroelectric Project, located on the Androscoggin River in Coos County, New Hampshire and has prepared a Draft Environmental Assessment (DEA) for the project. No federal land is occupied by project works or located within the project boundary.

The DEA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the DEA via the internet through the Commission's Home Page (*http://www.ferc.gov/*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2287–053.

Any questions regarding this notice may be directed to Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov.*

Dated: April 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07731 Filed 4–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–160–000.

Applicants: Silver Peak Solar, LLC.

Description: Silver Peak Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/4/24.

Accession Number: 20240404–5160.

Comment Date: 5 p.m. ET 4/25/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24–97–000.

Applicants: Energy Southeast, A Cooperative District, and Southeast

Energy Authority, A Cooperative District.

Description: Petition for Declaratory Order of Energy Southeast, A Cooperative District, and Southeast Energy Authority, A Cooperative District.

Filed Date: 3/29/24.

Accession Number: 20240329–5505.

Comment Date: 5 p.m. ET 4/29/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–290–006.

Applicants: Oakland Power Company LLC.

Description: Compliance filing: Hourly Capital Item Charge Update to be effective 8/1/2023.

Filed Date: 4/5/24.

Accession Number: 20240405–5199.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER23–1851–006.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Metadata Effective Date—Amended ISA–CSA, SA Nos. 6917–6918; Queue No. AD1–031 to be effective 10/26/2023.

Filed Date: 4/5/24.

Accession Number: 20240405–5194.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–706–002.

Applicants: Northern Orchard Solar PV, LLC.

Description: Tariff Amendment: Deficiency Filing to be effective 2/19/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5169.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–1238–001.

Applicants: ISO New England Inc., NSTAR Electric Company.

Description: Tariff Amendment: ISO New England Inc. submits tariff filing per 35.17(b): ISO–NE/NSTAR; LGIA–ISONE/NSTAR–23–04 Amendment Filing to be effective 1/10/2024.

Filed Date: 4/5/24.

Accession Number: 20240405–5089.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1658–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: Amended Filing—Submission of Tariff to Establish Markets+ to be effective 12/31/9998.

Filed Date: 4/5/24.

Accession Number: 20240405–5033.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1705–000.

Applicants: El Paso Electric Company.

Description: Baseline eTariff Filing: El Paso Electric Reserve Sharing Energy Tariff (NWPP Agreement) to be effective 5/1/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5154.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–1706–000.

Applicants: El Paso Electric Company.

Description: § 205(d) Rate Filing: Concurrence of EPE with Puget Sound Energy, Inc, NWPP Reserve Sharing Agreement to be effective 5/1/2024.

Filed Date: 4/4/24.

Accession Number: 20240404–5170.

Comment Date: 5 p.m. ET 4/25/24.

Docket Numbers: ER24–1707–000.

Applicants: AES ES Westwing, LLC.

Description: § 205(d) Rate Filing: AES ES Westwing, LLC SFA to be effective 4/6/2024.

Filed Date: 4/5/24.

Accession Number: 20240405–5072.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1708–000.

Applicants: AES Westwing II ES, LLC.

Description: § 205(d) Rate Filing: AES Westwing II ES, LLC SFA to be effective 4/6/2024.

Filed Date: 4/5/24.

Accession Number: 20240405–5086.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1709–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amended ISA, Service Agreement No. 6169; AC2–195 to be effective 6/5/2024.

Filed Date: 4/5/24.

Accession Number: 20240405–5135.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1710–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Further Delay the 19th FCA and Related Capacity Market Activities to be effective 5/21/2024.

Filed Date: 4/5/24.

Accession Number: 20240405–5170.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1711–000.

Applicants: Split Rail Solar Energy LLC.

Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 4/6/2024.

Filed Date: 4/5/24.

Accession Number: 20240405–5186.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1712–000.

Applicants: Entergy Arkansas, LLC.

Description: § 205(d) Rate Filing: Big Cypress Solar LLC, LBA Agreement to be effective 4/6/2024.

Filed Date: 4/5/24.

Accession Number: 20240405–5201.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1713–000.

Applicants: Entergy Arkansas, LLC.

Description: § 205(d) Rate Filing: Crooked Lake Solar LLC, LBA Agreement to be effective 4/6/2024.

Filed Date: 4/5/24.

Accession Number: 20240405–5202.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1714–000.

Applicants: Entergy Arkansas, LLC.

Description: § 205(d) Rate Filing: Prairie Mist Solar LLC, LBA Agreement to be effective 4/6/2024.

Filed Date: 4/5/24.

Accession Number: 20240405–5204.

Comment Date: 5 p.m. ET 4/26/24.

Docket Numbers: ER24–1715–000.

Applicants: Entergy Texas, Inc.

Description: § 205(d) Rate Filing: Liberty County Solar Project LLC, LBA Agreement to be effective 4/6/2024.

Filed Date: 4/5/24.

Accession Number: 20240405–5206.

Comment Date: 5 p.m. ET 4/26/24.

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

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

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

Dated: April 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07737 Filed 4–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

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

Filings Instituting Proceedings

Docket Numbers: RP24–654–000.
Applicants: Double E Pipeline, LLC.
Description: § 4(d) Rate Filing: Amendment to FTS Agreement with Marathon Oil Permian LLC to be effective 4/7/2024.
Filed Date: 4/4/24.
Accession Number: 20240404–5105.
Comment Date: 5 p.m. ET 4/16/24.

Docket Numbers: RP24–655–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: List of Non-Conforming Service Agreements (Adelphia West Ridge_2023/2024 Termin) to be effective 5/6/2024.
Filed Date: 4/5/24.
Accession Number: 20240405–5085.
Comment Date: 5 p.m. ET 4/17/24.

Docket Numbers: RP24–656–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Non-Conforming—Adelphia West Ridge Interconnect—2022/2023—Removal to be effective 5/6/2024.
Filed Date: 4/5/24.
Accession Number: 20240405–5090.
Comment Date: 5 p.m. ET 4/17/24.

Docket Numbers: RP24–657–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Yankee Gas to Emera Energy eff 4–5–24 to be effective 4/5/2024.
Filed Date: 4/5/24.
Accession Number: 20240405–5139.
Comment Date: 5 p.m. ET 4/17/24.

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

Filings in Existing Proceedings

Docket Numbers: RP24–581–001.
Applicants: Midcontinent Express Pipeline LLC.
Description: Tariff Amendment: Amendment RP24–581 FTS Negotiated Rate (DTE, Gunvor, Mercuria) to be effective 4/1/2024.
Filed Date: 4/5/24.
Accession Number: 20240405–5087.
Comment Date: 5 p.m. ET 4/12/24.

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.

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

Dated: April 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07736 Filed 4–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–60–000]

Northern Natural Gas Company; Notice of Schedule for the Preparation of an Environmental Assessment for the Northern Lights 2025 Expansion Project

On February 16, 2024, Northern Natural Gas Company (Northern) filed an application in Docket No. CP24–60–000 requesting a Certificate of Public Convenience and Necessity and authorization pursuant to Section 7 of the Natural Gas Act to abandon, construct, and operate certain natural gas pipeline facilities. The proposed project is known as the Northern Lights 2025 Expansion Project (Project), and Northern states it would provide 46,064 dekatherms per day serving residential, commercial, and industrial customer market growth in Northern's Market Area.

On February 29, 2024, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA—September 13, 2024
90-day Federal Authorization Decision Deadline [2]—December 12, 2024

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Northern proposes to construct and operate about 8.6 miles of pipeline extensions, and associated ancillary and auxiliary equipment in Freeborn, Houston, and Washington Counties, Minnesota, and Monroe County, Wisconsin.

The Northern Lights 2025 Expansion Project would consist of the following facilities:

- 3.0-mile-long extension of its 36-inch-diameter Lake Mills to Albert Lea E Line;
- 2.43-mile-long extension of its 30-inch-diameter Elk River 3rd Branch Line;
- a non-contiguous 1.91-mile-long extension of its 30-inch-diameter Farmington to Hugo C-Line;
- 1.28-mile-long extension of its 8-inch-diameter Tomah Branch Line Loop;

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

• one pig new launcher,[3] valves, and piping inside its existing Hugo Compressor Station;
• minor piping modifications within its existing La Crescent Compressor Station;
• relocation of one pig receiver facility;
• three new valve settings and associated valves and piping;
• removal of three existing tie-in valve settings;
• abandonment and removal of 275 feet of its existing 30-inch diameter Elk River 3rd branch line; and
• and other appurtenant facilities.

Background

On March 26, 2024, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Northern Lights 2025 Expansion Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries, churches, and newspapers. All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

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

[3] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP24–60), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: April 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07735 Filed 4–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR24–7–000]

Atlantic Marketing & Trading, Inc. v. Colonial Pipeline Company; Notice of Complaint

Take notice that on April 4, 2024, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 (2022), Atlantic Marketing & Trading, Inc. filed a complaint against Colonial Pipeline Company (Colonial) challenging the justness and reasonableness of the rates charged by Colonial for transportation service pursuant to certain tariffs on file with the Commission.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* 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.

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

Comment Date: 5:00 p.m. Eastern Time on May 6, 2024.

Dated: April 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07732 Filed 4–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1698–000]

AES ES Alamitos 2, 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 AES ES Alamitos 2, 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 April 25, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

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

Dated: April 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–07733 Filed 4–10–24; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011707–020.

Agreement Name: Gulf/South America Discussion Agreement.

Parties: BBC Chartering Carriers GmbH & Co. KG and BBC Chartering Logistics GmbH & Co. KG (acting as a single party); Industrial Maritime Carriers, LLC and Intermarine Carriers LLC (acting as a single party); Seaboard Marine Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment adds Intermarine Carriers, LLC as a party to the Agreement and reflects the upcoming resignation of Seaboard Marine Ltd. from the Agreement.

Proposed Effective Date: 05/19/2024.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/684.

Dated: April 5, 2024.

David Eng,

Secretary.

[FR Doc. 2024–07677 Filed 4–10–24; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; System of Records

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is modifying an existing system of records maintained by the Administration for Children and Families (ACF), Office of Child Support Services (OCSS): System No. 09–80–0381, ''OCSS National Directory of New Hires, HHS/ACF/OCSS.''

DATES: This Notice is applicable April 11, 2024, subject to a 30-day period in which to comment on the new and revised routine uses, described below. Please submit any comments by May 13, 2024.

ADDRESSES: The public should address written comments by mail or email to Anita Alford, Senior Official for Privacy, Administration for Children and Families, 330 C St. SW, Washington, DC 20201, or by email to *anita.alford@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: General questions about these system of records should be submitted by mail or email to Venkata Kondapolu, Director, Division of Federal Systems, Office of Child Support Services, at 330 C St. SW—5th Floor, Washington, DC 20201, or *venkata.kondapolu@acf.hhs.gov,* or by phone at 202–260–4712.

SUPPLEMENTARY INFORMATION:

I. Explanation of Changes to System of Records 09–80–0381

In accordance with 5 U.S.C. 552a(e)(4) and (11), HHS is modifying an existing system of records maintained by ACF, OCSS: System No. 09–80–0381, ''OCSS National Directory of New Hires, HHS/ACF/OCSS.''

This system of records covers records about newly hired employees, including employer, wage, unemployment compensation, and income withholding information, maintained for child support program purposes (including locating parents, the establishment of parentage, and the establishment and enforcement of child support and medical support obligations). The System of Records Notice (SORN) has been modified as follows:

- The System Name has been changed to ''OCSS National Directory of New Hires'' to reflect the name change of the ''Office of Support Enforcement'' to the ''Office of Child Support Services.''
- The System Manager section has been revised to change the title of the official serving as the System Manager from ''Acting Director'' to ''Director'' and to change the office name to ''Office of Child Support Services.''
- The Purpose(s) section has been revised to include an additional purpose for which OCSS may use NDNH data, *i.e.,* to create deidentified or aggregate datasets for reporting purposes or for HHS or another agency to use for analysis, and to describe one such example. In addition, a list of ''other'' statutorily authorized purposes has been clarified to show that those are purposes for which entities other than OCSS are authorized to use NDNH data, and that OCSS coordinates those entities' use of NDNH data for those purposes.
- The Categories of Individuals section has been revised to:
  - Remove the category of individuals whose information is contained within input records furnished for purposes of establishing or verifying eligibility of applicants for, or beneficiaries of, federal or state benefit programs. This category is redundant because these individuals would be covered by the other categories.
  - Add ''individuals about whom information is captured in the NDNH other than as described in the preceding categories'' to clarify that the last category is not a subset of the other categories.
- The Categories of Records section has been revised as follows:
  - In category (1), ''furnished by a State Directory of New Hires'' has been omitted, and the citation 42 U.S.C. 653a(g)(2)(A) was corrected to read 42 U.S.C. 653a(a)(2)(C).
  - In category (2), ''furnished by a federal department, agency, or instrumentality'' has been omitted, and the Department of Defense status code has been explained as indicating whether an individual is an active duty, civilian, retired/pension, or reserve employee.
  - In category (3), ''furnished by a State Directory of New Hires'' has been omitted, and unemployment compensation records are now described as consisting of claimant name, Social Security Number (SSN), address, benefit amount, and reporting period.
  - Existing category (4) has been broken into two categories, now numbered as (4) and (5), and revised as follows:
    - In category (4), ''furnished by a federal department, agency, or instrumentality'' has been omitted; ''wages paid to individuals'' has been changed to ''the amount of quarterly wages paid to federal employees''; and quarterly wages are now described as including quarterly wage processed date, employee name, federal employer identification number (FEIN), employer's state, Department of Defense code, employer name, employer address, employee wage amount, quarterly wage reporting period, transmitter agency code, transmitter state code, and transmitter state or agency name.
    - In category (5), ''records obtained pursuant to an agreement'' has been omitted; ''wage and unemployment compensation'' has been changed to ''wage and unemployment compensation amounts paid to individuals, as maintained by or for the Department of Labor''; and unemployment compensation records are now described as including unemployment insurance processed date, claimant name, claimant address, claimant benefit amount, unemployment insurance reporting period, transmitter state code, and transmitter state or agency name.
  - In category (6) (formerly category (5)), matching program input records are now described as consisting of an individual's name, date of birth, and SSN, and an explanation has been added stating that ''[s]uch input records are included in the NDNH to, *e.g.,* document that a SSN has been verified or that a SSN number transposition or SSN/name match error has been corrected, or to maintain a record of partial information which has not been verified.''
  - In category (7) (formerly category (6)), ''termination date'' has been changed to ''employment termination date''; ''contact information'' has been changed to ''phone number, home address, email address''; examples of employers' third party service providers have been included (''*e.g.,* vendors hired by an employer to process payroll or medical insurance information''); and ''order information'' has been changed to ''child support income withholding order information.''
- The Record Source Categories section has been revised to change ''departments, agencies, or instrumentalities of the United States or any state'' to ''federal, state, local, territorial, or tribal government agencies.''
- The Routine Uses section has been updated as follows:
  - A note at the start of the section stating that HHS may make a disclosure under a routine use subject to redisclosure restrictions has been revised to state that any such restrictions will be imposed pursuant to a Data Use Agreement entered into between HHS and the disclosure recipient.
  - Routine use 1 has been reworded at the start to change ''information'' to ''records'' and to provide examples explaining the term ''individual.''
  - Routine use 3 has been revised to include a definition of ''applicant'' and to update a statutory citation to read ''22 U.S.C. 9001'' instead of ''42 U.S.C. 11601.''
  - Routine use 4 has been revised to correct a statutory citation to read ''42'' U.S.C. 659a instead of ''52'' U.S.C. 659a.
  - Routine use 5 has been revised to include ''upon request'' to show that the disclosures are initiated by the disclosure recipient.
  - Routine use 6 has been revised to remove ''of individuals about whom information is maintained.''
  - Routine use 7 has been revised to include ''upon request'' to show that the disclosures are initiated by the disclosure recipient.
  - Routine use 8 has been revised to change ''the Secretary'' to ''the Secretary of Health and Human Services.''
  - Routine use 9 has been revised to include ''upon request'' to show that the disclosures are initiated by the disclosure recipient.
  - Former routine use 10, which authorized disclosures of data ''without personal identifiers'' for certain research purposes, has been deleted as unnecessary, because data lacking personal identifiers would not constitute Privacy Act records. The routine use is also unnecessary to the

extent it duplicates the disclosure authorization in 5 U.S.C. 552a(b)(5), which permits data that is ''not individually identifiable'' to be disclosed based on advance adequate written assurance from the recipient that the data will be used solely as a statistical research or reporting record.

○ Routine use 10 is now a new routine use added to allow HHS to disclose to the Secretary of Agriculture information about individuals participating in a rural housing program for the purpose of verifying the employment and income of the individual, pursuant to 7 U.S.C. 1981(f).

○ Routine uses 11, 12, and 16 have been revised to remove unnecessary wording at the end of each routine use, mentioning that the recipients also use data, with personal identifiers removed, to conduct analyses. That is now stated in the Purpose(s) section, because the recipients receive deidentified datasets from OCSS to use for that purpose (they do not create deidentified datasets from identifiable data they receive from OCSS). In addition:

■ Routine use 11 has been revised to include ''upon request'' to show that the disclosures are initiated by the disclosure recipient.

■ Routine use 12 has been revised to include ''upon request'' to show that the disclosures are initiated by the disclosure recipient.

■ Routine use 16 has been revised to reflect that the disclosures are for ''veteran employment tracking'' instead of for ''verifying the employment and income of the individual'' because the applicable disclosure provision in Title 42, United States Code, is now 42 U.S.C. 653a(h)(4) (added by Pub. L. 116–315, Jan. 5, 2021), which permits the Veterans Administration to access ''information reported by employers . . . for purposes of tracking employment of veterans.'' (The former disclosure provision, 42 U.S.C. 653(j)(11), expired Mar. 29, 2014; see 42 U.S.C. 653(j)(11)(G)(ii).). This routine use has also been revised to include ''upon request'' to show that the disclosures are initiated by the disclosure recipient.

○ Routine use 13 has been revised to include ''upon request'' to show that the disclosures are initiated by the disclosure recipient.

○ Routine use 14 has been revised to include ''upon request'' to show that the disclosures are initiated by the disclosure recipient. In addition, the words ''which has been referred to the Secretary of the Treasury for collection'' have been added.

○ Routine use 15 has been revised to include ''upon request'' to show that the disclosures are initiated by the disclosure recipient.

○ Routine use 17 has been revised to change ''information'' to ''records,'' and to include ''upon request'' to show that the disclosures are initiated by the disclosure recipient.

○ Routine use 19 has been revised to change ''individual'' to ''subject individual.''

○ A note at the end of the Routine Uses section has been revised. It explains that most disclosures the Privacy Act authorizes to be made without the data subject's consent are not, in fact, permissible for NDNH data, based on the restrictions contained in NDNH's authorizing statute at 42 U.S.C. 653(l)(1). The revised note also explains that, notwithstanding the restrictions in NDNH's authorizing statute, HHS may lawfully disclose NDNH data, upon request, to the following federal agencies without the data subject's consent, as such disclosures are *authorized* in 5 U.S.C. 552a(b)(10) and (b)(1), respectively, and are *required* by the Comptroller General and Inspector General statutes cited below: (a) the Comptroller General under 31 U.S.C. 721; and (b) the HHS Inspector General under 5 U.S.C. Appendix 3, section 6(a)(1).

• The Retention and Disposal section has been revised to explain that the ''order identifier'' is an ''alternate state case identifier.''

• The Record Access Procedures section has been revised to change ''the request should include'' to ''the request must include.''

Venkata Kondapolu,

Director, Division of Federal Systems.

SYSTEM NAME AND NUMBER:

OCSS National Directory of New Hires, HHS/ACF/OCSS, 09–80–0381.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Child Support Services, Administration for Children and Families, 330 C St. SW—5th Floor, Washington, DC 20201.

SYSTEM MANAGER(S):

Director, Division of Federal Systems, Office of Child Support Services, Administration for Children and Families, Department of Health and Human Services, 330 C St. SW, 5th Floor, Washington, DC 20201, or *venkata.kondapolu@acf.hhs.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 652(a)(9), 652(n), 653(a)(1) and (2), 653(c)(5), 653(i), and 659a(c)(2).

PURPOSE(S) OF THE SYSTEM:

The Office of Child Support Services (OCSS) uses the NDNH primarily to assist states and Indian tribes or tribal organizations to locate parents; establish paternity and child support orders, including the establishment of medical support; and enforce child support and medical support orders. States and other entities are specifically authorized by statute to use NDNH data in their programs for specific purposes, and OCSS coordinates their access to the data for those purposes. These purposes include: (a) to support the following programs, as specified in 42 U.S.C. 653 and 663: the Temporary Assistance for Needy Families (TANF) program, child and family services programs, and foster care and adoption assistance programs; (b) to establish or verify the eligibility of applicants for, or beneficiaries of, federal and state benefit programs, including through the use of matching programs; (c) to recoup payments or delinquent debts under benefit programs and non-tax debts owed to the Federal Government; (d) to administer the tax code; and (e) to conduct research likely to contribute to achieving the purposes of the TANF program or the federal/state/tribal child support program, as authorized under 42 U.S.C. 653(j)(5). OCSS may also use NDNH data to create deidentified or aggregate datasets for its reporting purposes, or for use by HHS or another agency for analysis. For example, OCSS provides deidentified NDNH data about rural housing program participants to the Secretary of Housing and Urban Development to support analysis regarding employment and income reporting.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Individuals who are newly hired ''employees'' within the meaning of chapter 24 of the Internal Revenue Code of 1986, 26 U.S.C. 3401, whose employers have furnished the information specified under 42 U.S.C. 653a(b)(1)(A) to a State Directory of New Hires which, in turn, has furnished such information to the NDNH pursuant to 42 U.S.C. 653a(g)(2)(A).

(2) Individuals who are Federal Government employees whose employers have furnished specified information to the NDNH pursuant to 42 U.S.C. 653(n) and 653a(b)(1)(c). This category does not include individuals who are employees of a department, agency, or instrumentality performing intelligence or counterintelligence functions, if the head of such department, agency, or instrumentality has determined that filing such a report

could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(3) Individuals to whom unemployment compensation or wages have been paid, and about whom the State Directory of New Hires has furnished such information to the NDNH pursuant to 42 U.S.C. 653(e)(3) and 653a(g)(2)(B). Such individuals may include independent contractors, in accordance with state law.

(4) Individuals about whom information is captured in the NDNH other than as described in the preceding categories, including individuals involved in child support cases whose information is collected from and disseminated to employers (and other payers of income) and state or Tribal IV–D child support enforcement agencies, courts, and other authorized entities for enforcement of child support orders by withholding of income.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Records pertaining to newly hired employees as defined by 42 U.S.C. 653a(a)(2)(C). Records in the system are the name, address, Social Security Number (SSN) or Taxpayer Identification Number (TIN), and date of hire of the employee; the name, address, and federal identification number of the employer of such employee; and, at the option of the state, the date of birth or state of hire of the employee.

(2) Records pertaining to newly hired federal employees pursuant to 42 U.S.C. 653a(b)(1)(C), including the name, address, SSN (or TIN), and date of hire of the employee; the name, address, and employer identification number (EIN) of the employer, and, where available, a Department of Defense status code, indicating whether an individual is an active duty, civilian, retired/pension, or reserve employee.

(3) Records pertaining to wages and unemployment compensation paid to individuals pursuant to 42 U.S.C. 653a(g)(2)(B). Unemployment compensation records include claimant name, SSN, address, benefit amount, and reporting period. Such records may also pertain to independent contractors, in accordance with state law.

(4) Records pertaining to the quarterly wages paid to federal employees pursuant to 42 U.S.C. 653(n). Quarterly wage records include the date quarterly wages were processed, employee name, federal employer identification number (FEIN), employer's state, Department of Defense code, employer name, employer address, employee wage amount, quarterly wage reporting period, transmitter agency code, transmitter state code, and transmitter state or agency name.

(5) Records pertaining to quarterly wage and unemployment compensation amounts paid to individuals, as maintained by or for the Department of Labor pursuant to 42 U.S.C. 653(e)(3). Unemployment compensation records include unemployment insurance processed date, claimant name, claimant address, claimant benefit amount, unemployment insurance reporting period, transmitter state code, and transmitter state or agency name.

(6) Input records, consisting of an individual's name, date of birth, and SSN, furnished by a state or federal agency or other entity for authorized matching with the NDNH. Such input records are included in the NDNH to, *e.g.,* document that an SSN has been verified or that an SSN number transposition or SSN/name match error has been corrected, or to maintain a record of partial information that has not been verified.

(7) Records collected from employers and other income sources pertaining to income withholding and medical support such as: employment termination date, final payment date and amount, phone number, home address, email address, names of children, health care coverage provider information (such as provider and contact name, FEIN, address, phone and fax numbers), information about any third-party service providers (*e.g.,* vendors hired by an employer to process payroll or medical insurance information), information about any professional employer organizations (if the employer outsourced employee management functions), pension plan provider information, lump sum income information, child support income withholding order information, past due child support information, amounts to withhold, and instructions for withholding.

RECORD SOURCE CATEGORIES:

NDNH records are obtained from federal, state, local, territorial, or tribal government agencies; from entities authorized to match to receive NDNH information; and from health plan administrators, employers, and other income sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These routine uses specify circumstances under which HHS may disclose records from this system of records without the consent of the data subject. Each proposed disclosure under any of these routine uses will be evaluated to ensure that the disclosure is legally permissible. When HHS makes a disclosure under a routine use and is required by law to, or chooses to, prohibit redisclosures or permit only certain redisclosures, HHS will make the disclosure pursuant to a Data Use Agreement that imposes the pertinent use, reuse, and re-disclosure restrictions on the recipient. Any information defined as ''return'' or ''return information'' under 26 U.S.C. 6103 (Internal Revenue Code) will not be disclosed under a routine use unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

(1) *Disclosure for Child Support Purposes*

Pursuant to 42 U.S.C. 653(a)(2), 653(b)(1)(A), and 653(c), records of the location of an individual (*e.g.,* a child support obligor, a child support obligee, or an individual who has, or may have, parental rights to a child), or records that would facilitate the discovery of the location of an individual or that would identify an individual for the purpose of establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations may be disclosed to ''authorized persons.'' Other information that may be disclosed in accordance with an applicable law and this routine use would include information about an individual's wages (or other income) from, and other benefits derived from, employment or other income and benefit sources, and information on the type, status, location, and amount of any assets of, or debts owed by or to, the individual. An ''authorized person'' is defined under 42 U.S.C. 653(c) as follows: (1) any agent or attorney of any state or Indian Tribe or Tribal organization (as defined in 25 U.S.C. 5304(e) and (l)), having in effect a plan approved under title IV–D of the Social Security Act who has the duty or authority under such plans to seek, or to recover any amounts owed as child and spousal support (including, when authorized under the state plan, any official of a political subdivision); (2) the court that has authority to issue an order, or to serve as the initiating court in an action to seek an order against a noncustodial parent for the support and maintenance of a child, or any agent of such court; (3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving assistance under a state program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 *et seq.*]) (as determined by regulations prescribed by the Secretary; currently, such regulations are contained in 45 CFR parts 302 and

303) without regard to the existence of a court order against a noncustodial parent who has a duty to support and maintain any such child; (4) a state agency that is administering a program operated under a state plan under subpart 1 of part B of title IV of the Social Security Act (42 U.S.C. 620 *et seq.*), or a state plan approved under subpart 2 of part B of title IV of the Social Security Act (42 U.S.C. 629 *et seq.*) or under part E of title IV of the Social Security Act (42 U.S.C. 670 *et seq.*); and (5) an entity designated as a Central Authority for child support enforcement in a foreign reciprocating country or a foreign treaty country for purposes specified in section 459A(c)(2) of the Social Security Act (42 U.S.C. 659a(c)(2)).

(2) *Disclosure for Purposes Related to the Unlawful Taking or Restraint of a Child or Child Custody or Visitation.*

Pursuant to 42 U.S.C. 653(b)(1), upon request of an ''authorized person,'' as defined in 42 U.S.C. 663(d)(2), information as to the most recent address and place of employment of a parent or child may be disclosed for the purpose of enforcing any state or federal law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination.

(3) *Disclosure to Department of State Under International Child Abduction Remedies Act.*

Pursuant to 42 U.S.C. 653(b)(1) and 663(e), the most recent address and place of employment of a parent or child may be disclosed upon request to the Department of State, in its capacity as the Central Authority designated in accordance with section 7 of the International Child Abduction Remedies Act, 22 U.S.C. 9001 *et seq.,* for the purpose of locating the parent or child on behalf of an applicant. An applicant includes ''any person who, pursuant to the [Hague] Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention'' (22 U.S.C. 9002(1)).

(4) *Disclosure to a Foreign Reciprocating Country and Foreign Treaty Country for Child Support Purposes.*

Pursuant to 42 U.S.C. 652(n), 653(a)(2), 653(c)(5), and 659a(c)(2), information on the state of residence of an individual sought for support enforcement purposes in cases involving residents of the United States and residents of foreign treaty countries or foreign countries that are the subject of a declaration under 42 U.S.C. 659a may be disclosed to the foreign country.

(5) *Disclosure to the Treasury for Tax Administration Purposes.*

Pursuant to 42 U.S.C. 653(i)(3), information may be disclosed to the Secretary of the Treasury, upon request, for purposes of administering 26 U.S.C. 32 (earned income tax credit), administering 26 U.S.C. 3507 (advance payment of earned income tax credit), and verifying a claim with respect to employment in a tax return.

(6) *Disclosure to the Social Security Administration for Verification.*

Pursuant to 42 U.S.C. 653(j)(1), HHS may disclose names, SSNs, and birth dates to the Social Security Administration to the extent necessary for verification by the Social Security Administration.

(7) *Disclosure for Locating an Individual for Paternity Establishment or in Connection with a Support Order.*

Pursuant to 42 U.S.C. 653(j)(2), the results of a comparison between records in this system and the Federal Case Registry of Child Support Orders may be disclosed, upon request, to the state or tribal IV–D child support enforcement agency responsible for the case for the purpose of locating an individual in a paternity establishment case or a case involving the establishment, modification, or enforcement of a support order.

(8) *Disclosure to State Agencies Operating Specified Programs.*

Pursuant to 42 U.S.C. 653(j)(3), information may be disclosed to a state to the extent and with the frequency that the Secretary of Health and Human Services determines to be effective in assisting the state to carry out its responsibilities under child support programs operated under 42 U.S.C. 651 through 669b (Title IV–D of the Social Security Act, Child Support and Establishment of Paternity), child and family services programs operated under 42 U.S.C. 621 through 629m (Title IV–B of the Social Security Act), Foster Care and Adoption Assistance programs operated under 42 U.S.C. 670 through 679c (Title IV–E of the Social Security Act), and assistance programs funded under 42 U.S.C. 601 through 619 (Title IV–A of the Social Security Act, Temporary Assistance for Needy Families).

(9) *Disclosure to the Commissioner of Social Security.*

Pursuant to 42 U.S.C. 653(j)(4), information may be disclosed to the Commissioner of Social Security, upon request, for the purpose of verifying eligibility for the Social Security Administration's programs and the administration of such programs, and for the administration of the Ticket to Work program.

(10) *Disclosure to the Secretary of Agriculture for Verification Purposes.*

Pursuant to 7 U.S.C. 1981(f), information may be disclosed, upon request, to the Secretary of Agriculture for the purpose of verifying the employment and income of individuals participating in a rural housing program (United States Housing Act of 1949 (42 U.S.C. 1472, 1474, 1490a, and 1490r)).

(11) *Disclosure to Secretary of Education for Collection of Defaulted Student Loans.*

Pursuant to 42 U.S.C. 653(j)(6), the results of a comparison of information in this system with information in the custody of the Secretary of Education may be disclosed, upon request, to the Secretary of Education for the purpose of collection of debts owed on defaulted student loans, or refunds on overpayments of grants, made under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.* and 42 U.S.C. 2751 *et seq.*).

(12) *Disclosure to Secretary of Housing and Urban Development for Verification Purposes.*

Pursuant to 42 U.S.C. 653(j)(7), information regarding an individual participating in a housing assistance program (United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*); 12 U.S.C. 1701s, 1701q, 1715l(d)(3), 1715l(d)(5), 1715z–1; or 42 U.S.C. 8013) may be disclosed, upon request, to the Secretary of Housing and Urban Development for the purpose of verifying the employment and income of the individual.

(13) *Disclosure to State Unemployment Compensation Agency for Program Purposes.*

Pursuant to 42 U.S.C. 653(j)(8), the employment, address, and income records of an individual whose name and SSN are furnished to HHS by a state agency administering an unemployment compensation program under federal or state law may be disclosed, upon request, to the state agency for the purposes of administering the unemployment compensation program.

(14) *Disclosure to Secretary of the Treasury for Debt Collection Purposes.*

Pursuant to 42 U.S.C. 653(j)(9), information pertaining to a person who owes the United States delinquent non-tax debt and whose debt has been referred to the Secretary of the Treasury in accordance with 31 U.S.C. 3711(g) may be disclosed, upon request, to the Secretary of the Treasury for purposes of collecting the debt.

(15) *Disclosure to State Agency for Supplemental Nutrition Assistance Program Purposes.*

Pursuant to 42 U.S.C. 653(j)(10), an individual's employment, address, and income records may be disclosed, upon request, to a state agency responsible for administering a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 *et seq.*) for the purposes of administering the program.

(16) *Disclosure to the Secretary of Veterans Affairs for Veteran Employment Tracking Purposes.*

Pursuant to 42 U.S.C. 653a(h)(4), information may be disclosed, upon request, to the Secretary of Veterans Affairs for the purpose of tracking the employment of the individual.

(17) *Disclosure for Law Enforcement Purpose.*

Records may be disclosed, upon request, to the appropriate federal, state, local, tribal, or foreign agency responsible for identifying, investigating, and prosecuting noncustodial parents who knowingly fail to pay their child support obligations and meet the criteria for federal prosecution under 18 U.S.C. 228. The records must be relevant to the violation of criminal nonsupport, as stated in the Deadbeat Parents Punishment Act, 18 U.S.C. 228.

(18) *Disclosure to Department of Justice or in Proceedings.*

Records may be disclosed to the Department of Justice (DOJ) or to a court or other adjudicative body in litigation or other proceedings when HHS or any of its components, or any employee of HHS in his or her official capacity, or any employee of HHS in his or her individual capacity where the DOJ or HHS has agreed to represent the employee, or the United States, is a party to the proceedings or has an interest in the proceedings and, by careful review, HHS determines that the records are both relevant and necessary to the proceedings.

(19) *Disclosure to Congressional Office.*

Records may be disclosed to a congressional office in response to a written inquiry from the congressional office made at the written request of the subject individual.

(20) *Disclosure to Contractor to Perform Duties.*

Records may be disclosed to a contractor performing or working on a contract for HHS who has a need for the records in the performance of its duties or activities in accordance with law and with the contract.

(21) *Disclosure in the Event of a Security Breach.*

(a) Records may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (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 HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(b) Records may be disclosed to another federal agency or federal entity when HHS determines that records from this system of records are reasonably necessary to assist 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.

In addition to the above routine use disclosures published pursuant to the Privacy Act at 5 U.S.C. 552a(b)(3), the Privacy Act permits an agency to make other disclosures described at 5 U.S.C. 552a(b) without the data subject's consent and without publishing a routine use. Most of those standardized disclosures are not, in fact, permissible for NDNH data due to restrictions in NDNH's authorizing statute at 42 U.S.C. 653(l)(1). Notwithstanding the restrictions in the NDNH statute, HHS may lawfully disclose NDNH data upon request to the following federal agencies without the data subject's consent, as *authorized* in 5 U.S.C. 552a(b)(10) and (b)(1), respectively, and *required* by the Comptroller General and Inspector General statutes cited below:

(a) the Comptroller General under 31 U.S.C. 721; and

(b) the HHS Inspector General under 5 U.S.C. Appendix 3, section 6(a)(1).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in the NDNH are stored electronically at the Social Security Administration's National Support Center and the OCSS Data Center. Historical logs and system backups are stored off-site at an alternate location.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records maintained in the NDNH are retrieved by the SSN (or TIN) of the individual to whom the record pertains. Records collected and disseminated from employers and other income sources are retrieved by state Federal Information Processing Standard (FIPS) codes and employer identification numbers, and records collected and disseminated from state IV–D child support enforcement agencies are retrieved by state FIPS codes.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records maintained in the NDNH are retained for 24 months after the date of entry and then are deleted from the database pursuant to 42 U.S.C. 653(i)(2)(A) and the National Archives and Records Administration (NARA) approved disposition schedule, N1–292–10–2. In accordance with 42 U.S.C. 653(i)(2)(B), OCSS will not have access, for child support enforcement purposes, to quarterly wage and unemployment insurance records in the NDNH if 12 months have elapsed since the information was provided by a State Directory of New Hires pursuant to 42 U.S.C. 653A(g)(2)(B) and there has not been a match resulting from the use of such records in any information comparison authorized under 42 U.S.C. 653(i). Input records for authorized matching to obtain NDNH information and records pertaining to income withholding collected and disseminated by OCSS are retained for 60 days. Audit logs, including information such as employer identification numbers, FIPS code numbers, document tracking numbers, case identification numbers and order identifier (alternate state case identifier), are retained up to 5 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The system leverages cloud service providers that maintain an authority to operate in accordance with applicable laws, rules, and policies, including Federal Risk and Authorization Management Program (FedRAMP) requirements. Specific administrative, technical, and physical controls are in place to ensure that the records collected and maintained in the NDNH are secure from unauthorized access. Access to the records is restricted to authorized personnel who are advised of the confidentiality of the records and the civil and criminal penalties for misuse and who sign a nondisclosure oath to that effect. Personnel are provided privacy and security training before being granted access to the records and annually thereafter.

Logical access controls are in place to limit access to the records to authorized personnel, to limit their access based on

their roles, and to prevent browsing. The records are processed and stored in a secure environment. All records are stored in an area that is always physically safe from unauthorized access. Safeguards conform to the HHS Information Security and Privacy Program, which may be found at *https://www.hhs.gov/ocio/securityprivacy/index.html.*

RECORD ACCESS PROCEDURES:

To request access to a record about you in this system of records, submit a written access request to the System Manager. The request must include your name, telephone number or email address, current address, signature, and sufficient particulars (such as date of birth or SSN) to enable the System Manager to distinguish between records on subject individuals with the same name. To verify your identity, your signature must be notarized, or your request must include your written certification that you are the individual who you claim to be and that you understand that the knowing and willful request for, or acquisition of, a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000.

CONTESTING RECORD PROCEDURES:

To request correction of a record about you in this system of records, submit a written amendment request to the System Manager. The request must contain the same information required for an access request and include verification of your identity in the same manner required for an access request. In addition, the request must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; it should include supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

To find out if this system of records contains a record about you, submit a written notification request to the System Manager. The request must identify this system of records, contain the same information required for an access request, and include verification of your identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

87 FR 3553 (Jan. 24, 2022).

[FR Doc. 2024–07668 Filed 4–10–24; 8:45 am]

BILLING CODE 4184–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–P–5095]

Determination That VISTARIL (Hydroxyzine Pamoate) Oral Suspension, 25 Milligrams/5 Milliliters, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that VISTARIL (hydroxyzine pamoate) Oral Suspension, 25 milligrams (mg)/5 milliliters (mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for VISTARIL (hydroxyzine pamoate) Oral Suspension, 25 mg/5 mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Awo Archampong-Gray, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6243, Silver Spring, MD 20993–0002, 301–796–0110, *Awo.Archampong-Gray@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

VISTARIL (hydroxyzine pamoate) Oral Suspension, 25 mg/5 mL, is the subject of NDA 011795, held by Pfizer Inc., and initially approved on June 3, 1959. VISTARIL is indicated for symptomatic relief of anxiety and tension associated with psychoneurosis and as an adjunct in organic disease states in which anxiety is manifested. It is also useful in the management of pruritus due to allergic conditions such as chronic urticaria and atopic and contact dermatoses, and in histamine-mediated pruritus. It is also indicated as a sedative when used as premedication and following general anesthesia. VISTARIL (hydroxyzine pamoate) Oral Suspension, 25 mg/5 mL, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Hyman, Phelps & McNamara, P.C. submitted a citizen petition dated November 17, 2023 (Docket No. FDA–2023–P–5095), under 21 CFR 10.30, requesting that the Agency determine whether VISTARIL (hydroxyzine pamoate) Oral Suspension, 25 mg/5 mL, has been voluntarily withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that VISTARIL (hydroxyzine pamoate) Oral Suspension, 25 mg/5 mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that VISTARIL (hydroxyzine pamoate) Oral Suspension, 25 mg/5 mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of VISTARIL (hydroxyzine pamoate) Oral Suspension, 25 mg/5 mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was

withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list VISTARIL (hydroxyzine pamoate) Oral Suspension, 25 mg/5 mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to VISTARIL (hydroxyzine pamoate) Oral Suspension, 25 mg/5 mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: April 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–07707 Filed 4–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–P–4587]

Determination That KEMSTRO (Baclofen) Orally Disintegrating Tablets, 10 Milligrams and 20 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that KEMSTRO (baclofen) orally disintegrating tablets, 10 milligrams (mg) and 20 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for baclofen orally disintegrating tablets, 10 mg and 20 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Alexander Poonai, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6213, Silver Spring, MD 20993–0002, 301–796–9120, *Alexander.Poonai@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

KEMSTRO (baclofen) orally disintegrating tablets, 10 mg and 20 mg, are the subject of NDA 021589, held by UCB, Inc., and initially approved on October 30, 2003. KEMSTRO is indicated for the alleviation of signs and symptoms of spasticity resulting from multiple sclerosis, particularly for the relief of flexor spasms and concomitant pain, clonus, and muscular rigidity.

KEMSTRO (baclofen) orally disintegrating tablets, 10 mg and 20 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Pharmobedient Consulting, LLC, submitted a citizen petition dated October 16, 2023 (Docket No. FDA–2023–P–4587), under 21 CFR 10.30, requesting that the Agency determine whether KEMSTRO (baclofen) orally disintegrating tablets, 10 mg and 20 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that KEMSTRO (baclofen) orally disintegrating tablets, 10 mg and 20 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that KEMSTRO (baclofen) orally disintegrating tablets, 10 mg and 20 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of KEMSTRO (baclofen) orally disintegrating tablets, 10 mg and 20 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that these drug products were withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list KEMSTRO (baclofen) orally disintegrating tablets, 10 mg and 20 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to KEMSTRO (baclofen) orally disintegrating tablets, 10 mg and 20 mg, may be approved by the Agency so long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: April 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–07722 Filed 4–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0918]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Labeling Requirements: Calorie Labeling of Articles of Food in Vending Machines and Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 13, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0381. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Labeling Requirements: Calorie Labeling of Articles of Food in Vending Machines and Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments

OMB Control Number 0910–0381—Revision

This information collection supports statutory and regulatory requirements that govern food labeling, and information collection recommendations discussed in associated Agency guidance. Sections 4, 5, and 6 of the Fair Packaging Labeling Act (15 U.S.C. 1453, 1454, and 1455) and sections 201, 301, 402, 403, 409, 411, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e), establish provisions under which a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of unauthorized claims. Implementing regulations are codified in parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105). While regulations in part 101 set forth general food labeling provisions, requirements pertaining to the common or usual name for nonstandardized foods; guidelines for nutritional quality to prescribe the minimum level or range of nutrient composition appropriate for a given class of food; and requirements for foods for special dietary use are found in parts 102, 104, and 105, respectively. The requirements are intended to ensure the safety of food products produced or sold in the United States and enable consumers to be knowledgeable about the foods they purchase and include corresponding information disclosure requirements, along with the reporting and recordkeeping provisions, subject to enforcement by FDA.

In the **Federal Register** of April 12, 2023 (88 FR 22045), we published a 60-day notice soliciting comment on the proposed collection of information. No comments were received. On our own initiative and for efficiency of Agency operations, we are revising the information collection to include burden we attribute to related collection activities described in sections 201(n), 403(a)(1), 403(f), 403(q)(5)(H), and 701(a) of the FD&C Act, codified in §§ 101.8 and 101.11 (21 CFR 101.8 and 101.11), and currently approved under OMB control number 0910–0782. Sections 101.8 and 101.11 provide that respondents with a chain of 20 or more locations will disclose nutritional information of certain foods for consumers of food products for the purpose of making informed dietary choices. Section 101.8 applies specifically to vending machines, and § 101.11 applies to covered establishments such as restaurants. Sections 101.8(d) and 101.11(d) provide for registration for respondents not otherwise subject to these regulations but who wish to voluntarily participate with this information collection activity, for which we developed Form FDA 3757 entitled ''DHHS/FDA Menu and Vending Machine Labeling Voluntary Registration'' to assist respondents in this regard. The form is available for download at *https://www.fda.gov/about-fda/reports-manuals-forms/forms* and entering ''3757'' into the search field. To keep the registration active, a respondent renews their registration every other year within 60 days prior to the expiration of the respondent's current registration with FDA, or it will automatically expire.

We have also developed Agency guidance to communicate our interpretation of the regulatory requirements. The guidance document entitled ''Menu Labeling: Supplemental Guidance for Industry'' (May 2018), available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-menu-labeling-supplemental-guidance,* provides a discussion of the regulations in §§ 101.8 and 101.11 in a question-and-answer format. We have recently issued a draft second edition of the guidance document (December 2023), available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/draft-guidance-industry-menu-labeling-supplemental-guidance-edition-2.* The draft guidance, when finalized, will update the May 2018 guidance to add two new questions and answers regarding voluntarily declaring added sugars as part of additional written nutrition information and voluntarily providing nutrition information consistent with the menu labeling requirements through third-party platforms. Because of the growing popularity of third-party platforms among consumers, such as third-party online ordering websites and delivery applications to order food for pickup and delivery from chain restaurants and similar retail food establishments, we discuss our recommendation that covered establishments provide third-party platforms nutrition information for standard menu items to help consumers make informed and healthy decisions when ordering their meals online using a third-party platform. All Agency guidance documents are issued consistent with our good guidance practice regulations in 21 CFR 10.115, which provide for public comment at any time.

Description of Respondents: Respondents to the collections of information in part 101 are manufacturers, packers, and distributors of food products, as well as certain food

retailers, such as supermarkets and restaurants, subject to statutory and regulatory food labeling requirements. Respondents are from the private sector (including for-profit businesses, not-for-profit institutions, and farms).

Collections of information found in §§ 101.8 and 101.11 also include vending machine operators and restaurants or other similar food establishments that are subject to the requirements of part 101 as well as those entities who voluntarily participate with the provisions through registration with FDA.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity using form FDA 3757; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Initial registration for Vending Machine Labeling; 101.8(d)	13	1	13	2	26
Biennial registration renewal for Vending Machine Labeling; 101.8(d)	20	1	20	*0.5	10
Initial registration for Menu Labeling; 101.11(d)	3,559	1	3,559	2	7,118
Registration renewal for Menu Labeling; 101.11(d)	5,340	1	5,340	*0.5	2,670
Total					9,824

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
* 30 minutes.

TABLE 2—ESTIMATED RECORDKEEPING BURDEN [1]

Activity; 21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Nutrition analysis; 101.11(c)	100,000	1	100,000	1	100,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimate of burden reflects adjustments. We have reorganized the information collection activities into reporting and recordkeeping categories, eliminating a separate summary burden estimate for third-party disclosure. As defined in 5 CFR 1320.3(m), recordkeeping is a requirement to maintain specified records and includes activities such as disclosure of these records to third parties, the Federal government, or the public. We believe that vending machine operators and covered establishments who must demonstrate compliance with statutory and regulatory requirements applicable to food labeling would retain requisite records as a usual and customary business practice. (See 5 CFR 1320.3(b)(2).) At the same time, we have modified our recordkeeping burden estimates to account for effort that may be necessary to retain, as well as to ''transmit or otherwise disclose [the] information,'' to the Federal government and/or third parties (see 5 CFR 1320.3(b)(1)(ix)) as required by the regulations to the extent that they reflect on activities applicable to §§ 101.8 and 101.11. Included in our estimated number of recordkeepers are those who voluntarily elect to register with FDA through submissions in accordance with §§ 101.8(d) and 101.11(d). Cumulatively, these adjustments result in a decrease of 1,399,306 hours and 7,370,090 responses annually to the information collection.

Dated: April 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–07661 Filed 4–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–0026]

Issuance of Priority Review Voucher; Rare Pediatric Disease Product; DUVYZAT (givinostat)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of the priority review voucher. FDA has determined that DUVYZAT (givinostat), approved on March 21, 2024, manufactured by Italfarmaco S.p.A., meets the criteria for a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394.

SUPPLEMENTARY INFORMATION: FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that DUVYZAT (givinostat), manufactured by Italfarmaco S.p.A., meets the criteria for a priority review voucher. DUVYZAT (givinostat) oral suspension is indicated for the treatment of Duchenne muscular dystrophy in patients 6 years of age or older.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about DUVYZAT (givinostat), go to the ''*Drugs@FDA*''

website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: April 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–07657 Filed 4–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–4849]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Allergen Labeling and Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 13, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0792. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Allergen Labeling and Reporting

OMB Control Number 0910–0792—Revision

This information collection helps support implementation of statutory requirements pertaining to ingredients derived from major food allergens. The Federal Food, Drug, and Cosmetic Act (FD&C Act) defines the term ''major food allergen'' (section 201(qq) of the FD&C Act (21 U.S.C. 321(qq))) and provides that foods are misbranded unless they declare the presence of each major food allergen on the product label using the name of the food source from which the major food allergen is derived or are exempt from the requirement. Under sections 403(w)(6) and (7) of the FD&C Act (21 U.S.C. 343(w)(6) and (7)), respondents may request an FDA determination that an ingredient is exempt from the labeling requirement of section 403(w)(1) of the FD&C Act. Alternatively, an ingredient may become exempt through submission of a notification containing scientific evidence showing that the ingredient ''does not contain allergenic protein'' or that there has been a previous determination through a premarket approval process under section 409 of the FD&C Act (21 U.S.C. 348) that the ingredient ''does not cause an allergic response that poses a risk to human health'' (section 403(w)(7) of the FD&C Act).

To assist respondents with the information collection in this regard, the document entitled ''Guidance for Industry: Food Allergen Labeling Exemption Petitions and Notifications'' (June 2015), available on our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-food-allergen-labeling-exemption-petitions-and-notifications,* communicates information we recommend respondents include in petitions submitted under sections 403(w)(6) and (7) of the FD&C Act or notifications submitted under section 409 of the FD&C Act. We use the information submitted in the petition or notification to determine whether the ingredient satisfies the criteria of section 403(w)(6) and (7) of the FD&C Act for granting the exemption. The allergen information disclosed on the label or labeling of a food product benefits consumers who purchase that food product. Because even small exposure to a food allergen can potentially cause an adverse reaction, consumers rely upon food labeling information to help determine their product choices.

On April 23, 2021, the definition of the term ''major food allergen'' was amended by the Food Allergy Safety, Treatment, Education, and Research Act of 2021 (FASTER Act) (Pub. L. 117–11) to include sesame. Accordingly, we are revising the information collection to account for burden attributable to required declarations and/or associated requests for exemption as they pertain to foods that include sesame. We issued the draft guidance document entitled ''Questions and Answers Regarding Food Allergens, Including the Food Allergen Labeling Requirements of the Federal Food, Drug, and Cosmetic Act (Edition 5)'' (November 2022), available on our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/draft-guidance-industry-questions-and-answers-regarding-food-allergen-labeling-edition-5,* that once finalized, will communicate our current thinking regarding the labeling of food allergens, including sesame in food products regulated under section 403 of the FD&C Act. The guidance was issued consistent with our good guidance practice regulations in 21 CFR 10.115, which provide for public comment at any time.

Description of Respondents: The respondents to this collection of information are manufacturers and packers of packaged foods sold in the United States subject to the labeling requirements and prohibitions found in section 403 of the FD&C Act.

In the **Federal Register** of December 8, 2023 (88 FR 85640), we published a 60-day notice soliciting comment on the proposed collection of information. Although one comment was received, we believe it was misdirected. The comment pertained to neither the topic of this notice, nor the four information collection topics solicited.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

FD&C act section; information collection activity	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours	Total capital costs
403; review product labeling for compliance with applicable statutory requirements	77,500	1	77,500	1	77,500	0
403; redesign/modifications to product labeling for compliance with applicable statutory requirements	775	1	775	16	12,400	$1,414,375
Total					89,900	1,414,375

[1] There are no operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C act section; information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
403(w)(6); petition for exemptions	6	1	6	100	600
403(w)(7); notification submissions	6	1	6	68	408
Total					1,008

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimate of the third-party disclosure burden associated with food allergen labeling under section 403(w)(1) of the FD&C Act includes the time we assume respondents need to review the labels of new or reformulated products for compliance with the requirements of section 403(w)(1) of the FD&C Act, along with the time needed to make any needed modifications to the labels of those products. We believe firms have already redesigned their labels to comply with requirements under the Food Allergen Labeling and Consumer Protection Act of 2004. However, this estimate accounts for firms that will redesign their label to comply with requirements under the FASTER Act. Our estimated reporting burden is based on our past experience with these submissions. We have increased our cumulative estimate by 12,552 hours and 776 responses annually to reflect the inclusion of sesame as a major food allergen.

Dated: April 8, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–07663 Filed 4–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Availability of Draft Health Center Program Policy Guidance Regarding Services To Support Transitions in Care for Justice-Involved Individuals Reentering the Community

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Request for public comment on draft Health Center Program policy guidance regarding services to support transitions in care for Justice-involved individuals reentering the community.

SUMMARY: HRSA is inviting public comment on the draft Health Center Program Policy Guidance Regarding Services to Support Transitions in Care for Justice-Involved Individuals Reentering the Community. The purpose of the draft Policy Information Notice (PIN) is to propose Health Center Program policy guidance for all health centers that apply for and receive federal award funds under the Health Center Program, as authorized by section 330 of the Public Health Service (PHS) Act (including sections 330(e), (g), (h), and (i)), as well as section 330 subrecipient organizations and Health Center Program look-alikes, to clarify the conditions under which they may provide certain health services as part of the Health Center Program scope of project to certain incarcerated/detained individuals. This draft PIN establishes policy guidance that identifies a set of health services that a health center may provide, the locations at which such services may be provided, the target population for such services (specifically, incarcerated/detained individuals who are scheduled for release from a carceral setting within 90 days), and other pertinent circumstances under which the health center may, on its own behalf and subject to all section 330 requirements, provide such services to justice-involved individuals reentering the community to support their care transition from the carceral setting to the community within the scope of their Health Center Program project.

DATES: Submit comments on or before June 14, 2024.

ADDRESSES: Electronic comments should be submitted through the HRSA Bureau of Primary Health Care Contact Form (*https://hrsa.my.site.com/support/s/*), ''Comment on Draft Policy'' under the ''Policy'' section. Comments should be submitted no later than 60 days after the publication date.

FOR FURTHER INFORMATION CONTACT: Jennifer Joseph, Office of Policy and Program Development Director, HRSA, at *jjoseph@hrsa.gov* and 301–594–4300.

SUPPLEMENTARY INFORMATION: HRSA provides grants to eligible applicants under section 330 of the PHS Act, as amended (42 U.S.C. 254b), to support the delivery of preventive and primary

care services to the nation's underserved individuals and families. HRSA also certifies eligible applicants under the Health Center Look-Alike Program (see sections 1861(aa)(4)(B) and 1905(l)(2)(B) of the Social Security Act). Look-alikes do not receive Health Center Program funding but must meet the Health Center Program statutory and regulatory requirements. Nearly 1,400 Health Center Program-funded health centers and more than 100 Health Center Program look-alike organizations operate more than 15,000 service delivery sites that provide care to more than 30.5 million patients in every U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin. Note that for the purposes of this document, the term ''health center'' refers to entities that receive a federal award under section 330 of the PHS Act, as amended, as well as subrecipients and organizations designated as look-alikes, unless otherwise stated.

Carole Johnson,

Administrator.

[FR Doc. 2024–07630 Filed 4–10–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the Fifth Meeting of the 2025 Dietary Guidelines Advisory Committee

AGENCY: Office of the Assistant Secretary for Health (OASH), Department of Health and Human Services (HHS); Office of Disease Prevention and Health Promotion, U.S. Department of Agriculture (USDA), Food, Nutrition, and Consumer Services (FNCS).

ACTION: Notice.

SUMMARY: The Departments of Health and Human Services and Agriculture announce the fifth meeting of the 2025 Dietary Guidelines Advisory Committee (Committee). This meeting will be open to the public virtually.

DATES: The fifth Committee meeting will be held on May 29, 2024, from 1:00 p.m. to 5:30 p.m. Eastern Time and on May 30, 2024, from 8:30 a.m. to 4:00 p.m. Eastern Time.

ADDRESSES: The meeting will be accessible online via livestream and recorded for later viewing. Registrants will receive the livestream information before the meeting.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, 2025 Dietary Guidelines Advisory Committee, Janet M. de Jesus, MS, RD; Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852; Phone: 240–453–8266; Email *DietaryGuidelines@hhs.gov.* Additional information is at *DietaryGuidelines.gov.*

SUPPLEMENTARY INFORMATION:

Authority and Purpose: Under Section 301 of Public Law 101–445 (7 U.S.C. 5341, the National Nutrition Monitoring and Related Research Act of 1990, title III), the Secretaries of HHS and USDA are directed to publish the *Dietary Guidelines for Americans* jointly at least every five years. See 88 FR 3423, January 19, 2023, for notice of the first meeting of the 2025 Dietary Guidelines Advisory Committee, the complete Authority and Purpose, and the Committee's Task. The 2025 Dietary Guidelines Advisory Committee is formed and governed under the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App).

Purpose of the Meeting: The Committee will meet to provide subcommittee updates, including presentations by each subcommittee and deliberation by the full Committee regarding progress made since the fourth public meeting, including protocol development, evidence review and synthesis, draft conclusion statements, and plans for future Committee work.

Meeting Agendas: The agenda will be announced in advance of the meeting on *DietaryGuidelines.gov.*

Meeting Registration: This Committee meeting is open to the public. The meeting will be accessible online via livestream and recorded for later viewing. Registration is required for the livestream. To register, go to *DietaryGuidelines.gov* and click on the link for ''Meeting Registration.''

Meeting materials for each meeting will be accessible at *DietaryGuidelines.gov.* Materials may be requested by email at *DietaryGuidelines@hhs.gov.*

Public Comments: A call for written public comment to the Committee opened on January 19, 2023, and will remain open throughout the Committee's deliberations. Written comments may be submitted at *Regulations.gov* (Document ID: HHS–OASH–2022–0021–0001).

Paul Reed,

Deputy Assistant Secretary for Health, Office of Disease Prevention and Health Promotion.

[FR Doc. 2024–07741 Filed 4–10–24; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0282]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0019

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: 1625–0019, Alternative Compliance for International and Inland Navigation Rules; 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 10, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0282] 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–2024–0282, and must be received by June 10, 2024.

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: Alternative Compliance for International and Inland Navigation Rules—33 CFR parts 81 through 89.

OMB Control Number: 1625–0019.

Summary: The information collected provides an opportunity for an owner, operator, builder, or agent of a unique vessel to present their reasons why the vessel cannot comply with existing International and Inland Navigation Rules and how alternative compliance can be achieved. If appropriate, a Certificate of Alternative Compliance is issued.

Need: Certain vessels cannot comply with the International Navigation Rules (see 33 U.S.C. 1601 through 1608; 28 U.S.T. 3459, and T.I.A.S. 8587) and Inland Navigation Rules (33 U.S.C. 2071). The Coast Guard thus provides an opportunity for alternative compliance. However, it is not possible to determine whether alternative compliance is appropriate, or what kind of alternative procedures might be necessary, without this collection.

Forms: None.

Respondents: Vessel owners, operators, builders, and agents.

Frequency: One-time application.

Hour Burden Estimate: The estimated burden has decreased from 180 hours to 171 hours a year due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: April 5, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–07740 Filed 4–10–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0048]

National Towing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice; request for applications.

SUMMARY: The U.S. Coast Guard is accepting applications to fill eighteen vacancies on the National Towing Safety Advisory Committee (Committee). This Committee advises the Secretary of Homeland Security, via the Commandant of the U.S. Coast Guard on matters relating to shallow-draft inland navigation, coastal waterway navigation, and towing safety.

DATES: Completed applications must reach the U.S. Coast Guard on or before June 10, 2024.

ADDRESSES: Applications must include: (a) a cover letter expressing interest in an appointment to the National Towing Safety Advisory Committee, (b) a resume detailing the applicant's relevant experience for the position applied for, and (c) a brief biography. Applications should be submitted via email with subject line ''NTSAC Vacancy Application'' to *Matthew.d.Layman@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Layman, Designated Federal Officer of the National Towing Safety Advisory Committee; telephone 202–372–1421 or email at *Matthew.d.Layman@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Towing Safety Advisory Committee is a Federal advisory committee.

The National Towing Safety Advisory Committee was established by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* (Pub. L. 115–282, 132 Stat. 4192), and is codified in 46 U.S.C. 15108. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The National Towing Safety Advisory Committee provides advice and recommendations to the Secretary of Homeland Security through the Commandant of the U. S. Coast Guard, on matters related to shallow-draft inland navigation, coastal waterway navigation, and towing safety.

The Committee is required to meet at least once a year in accordance with 46 U.S.C. 15109(a). We expect the Committee to meet at least twice a year, but it may meet more frequently.

Under provisions in 46 U.S.C. 15109(f)(6), if you are appointed as a member of the Committee, your membership term will expire on December 31st of the third full year after the effective date of your appointment. The Secretary of Homeland Security may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f)(4).

All members serve at their own expense and receive no salary from the Federal Government. The only compensation the members may receive is for travel expenses, including per diem in lieu of subsistence, actual reasonable expenses, or both, incurred in the performance of their direct duties for the Committee in accordance with Federal Travel Regulations. If you are appointed as a member of the

Committee, you will be required to sign a Non-Disclosure Agreement and a Gratuitous Services Agreement.

In this solicitation for Committee Members, we will consider applications for the following 18 positions:

- Seven members to represent the barge and towing industry, reflecting a regional geographic balance.
- One member to represent the offshore mineral and oil supply vessel industry.
- One member to represent masters and pilots of towing vessels who hold active licenses and have experience on the Western Rivers and the Gulf Intracoastal Waterway.
- One member to represent the masters of towing vessels in offshore service who hold active licenses.
- One member to represent masters of active ship docking or harbor towing vessels.
- One member to represent licensed and unlicensed towing vessel engineers with formal training and experience.
- Two members to represent port districts, authorities, or terminal operators.
- Two members to represent shippers and of the two, one to engaged in the shipment of oil or hazardous materials by barge.
- Two members to represent the general public.

If you are applying for the position who represents the general public, you will be appointed and serve as a Special Government Employee as defined in 18 U.S.C. 202(a). Applicants for appointment as a Special Government Employee are required to complete a Confidential Financial Disclosure Report (OGE Form 450) for new entrants and if appointed as a member must submit a new entrant OGE Form 450 annually. The U.S. Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal Court or as otherwise provided under the Privacy Act (5 U.S.C 552a). Only the Designated U. S. Coast Guard Ethics Official or their designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the website of the Office of Government Ethics (*www.oge.gov*), or by calling or emailing the individual listed above in the **FOR FURTHER INFORMATION CONTACT** section. Applications for members drawn from the general public must be accompanied by a completed OGE Form 450.

In order for the Department, to fully leverage broad-ranging experience and education, the National Towing Safety Advisory Committee must be diverse with regard to professional and technical expertise. The Department is committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the Nation's people.

If you are interested in applying to become a member of the Committee, email your application to *Matthew.d.Layman@uscg.mil* as provided in the **ADDRESSES** section of this notice. Applications must include: (a) a cover letter expressing interest in an appointment to the National Towing Safety Advisory Committee, (b) a resume detailing the applicant's relevant experience for the position applied for, and (c) a brief biography of the applicant by the deadline in the **DATES** section of this notice.

The U.S. Coast Guard will not consider incomplete or late applications.

Privacy Act Statement

Purpose: To obtain qualified applicants to fill 18 vacancies on the National Towing Safety Advisory Committee. When you apply for appointment to the DHS' National Towing Safety Advisory Committee, DHS collects your name, contact information, and any other personal information that you submit in conjunction with your application. DHS will use this information to evaluate your candidacy for Committee membership. If you are chosen to serve as a Committee member, your name will appear in publicly-available Committee documents, membership lists, and Committee reports.

Authorities: 14 U.S.C. 504; 46 U.S.C. 15108 and 15109; and 18 U.S.C. 202(a), and Department of Homeland Security Delegation No. 00915.

Routine Uses: Authorized U.S. Coast Guard personnel will use this information to consider and obtain qualified candidates to serve on the Committee. Any external disclosures of information within this record will be made in accordance with DHS/ALL–009, Department of Homeland Security Advisory Committee (73 FR 57642, October 3, 2008).

Consequences of Failure to Provide Information: Furnishing this information is voluntary. However, failure to furnish the requested information may result in your application not being considered for the Committee.

Dated: April 2, 2024.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2024–07696 Filed 4–10–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0190]

National Towing Safety Advisory Committee; April and May 2024 Meetings

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The National Towing Safety Advisory Committee (Committee) and its subcommittees will conduct a series of meetings over 2 days in Annapolis, MD, to review and discuss matters relating to shallow-draft inland navigation, coastal waterway navigation, and towing safety. These meetings will be open to the public.

DATES:

Meetings: National Towing Safety Advisory Committee will be called to order and have subcommittee working sessions and a full committee working session on Tuesday, April 30, 2024, from 8 a.m. to 5 p.m. Eastern Daylight Time (EDT). The full committee will meet on Wednesday, May 1, 2024, from 8 a.m. until 5 p.m. EDT. Please note these meetings may close early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the meetings, submit your written comments no later than April 17, 2024.

ADDRESSES: The meeting will be held at the Graduate Annapolis, 126 West St, Annapolis, MD 21401 Graduate Annapolis | Hotel Near Naval Academy (*graduatehotels.com*).

The National Towing Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Mr. Matthew D. Layman at *Matthew.D.Layman@uscg.mil* or call at 202–372–1421 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meetings as time permits, but if you want Committee members to review your comment before the meetings, please submit your comments no later than April 17, 2024. We are particularly interested in comments on the topics in the ''Agenda'' section below. We encourage you to submit comments through Federal Decision-Making Portal at *https://www.regulations.gov.* To do

so, go to *https://www.regulations.gov,* type USCG–2024–0190 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 your material cannot be submitted using *https://www.regulations.gov,* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number USCG–2024–0190. Comments received will be posted without alteration at *https://www.regulations.gov* including any personal information provided. You may wish to review the Privacy and Security Notice, found via link on the homepage *https://www.regulations.gov,* and DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be 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 using the Subscribe option, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew D. Layman, Designated Federal Officer of the National Towing Safety Advisory Committee, telephone 202–372–1421, or *Matthew.D.Layman@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* (Pub. L. 117–286, 5, U.S.C. ch. 10). The National Towing Safety Advisory Committee was established by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* (Pub. L. 115–282, 132 Stat. 4190), and is codified in 46 U.S.C. 15108. The Committee operates under the provisions of the *Federal Advisory Committee Act,* and 46 U.S.C. 15109. The National Towing Safety Advisory Committee provides advice and recommendations to the Secretary of Homeland Security through the Commandant of the U. S. Coast Guard, on matters related to shallow-draft inland navigation, coastal waterway navigation, and towing safety.

Agenda

The agenda for the National Towing Safety Advisory Committee is as follows:

The Committee Meeting Agenda, April 30, 2024

I. Opening

a. Call to order and Designated Federal Officer (DFO) Remarks.
b. Committee Chairperson Remarks.

II. Subcommittee Breakout Working Session

a. Task #22–01, Recommendations to the Coast Guard for Rulemaking Improvements to Subchapter M;
b. Task #22–02, Recommendations for Training and Instruction for Crewmembers Working Aboard Subchapter M Inspected Towing Vessels.

III. Full Committee Working Session

a. U. S Coast Guard E-Gov Travel Service Briefing.
b. Review New Task Statements.
- Sexual Assault and Sexual Harassment Policy Review.

IV. Public Comment Period

V. Adjournment of Meeting

The Committee Meeting Agenda, May 1, 2024

I. Opening

a. Call to Order and DFO Remarks.
b. Committee Chairperson Remarks.
c. Roll Call and Determination of Quorum.
d. U.S. Coast Guard Leadership Remarks.

II. Administration

a. Adoption of Meeting Agenda.
b. Approval of Meeting Minutes for September 27, 2023 Committee Meeting.

III. Old Business

a. Update from Subcommittees:
○ Task #22–01, Recommendation to the Coast Guard for Rulemaking Improvements to Subchapter M;
○ Task #21–04, Report on the Challenges Faced by the Towing Vessel Industry as a Result of the Covid-19 Pandemic.
b. Vetting Subcommittee Update.

IV. New Business

a. Committee Planning.

V. Information Session

a. U.S. Coast Guard Sector Baltimore.
b. Tradepoint Atlantic, Inc.
c. ACOE, Marine Construction.
d. U. S. Coast Guard Engineering Alternative Fuels.
e. U.S. Coast Guard Commercial Vessel Compliance.

VI. Committee Discussion

VII. Public Comment Period

VIII. Closing Remarks and Plans for Next Meeting

IX. Adjournment of Meeting

A copy of all pre-meeting documentation will be available at *https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Office-of-Operating-and-Environmental-Standards/vfos/TSAC/* no later than April 17, 2024.

Alternatively, you may contact Mr. Matthew Layman as noted above in the **FOR FURTHER INFORMATION CONTACT** section above.

There will be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Notice of Future 2024 Committee Meetings

To receive automatic email notices of future National Towing Safety Advisory Committee meetings in 2024, go to the online docket, USCG–2024–0190 (*https://www.regulations.gov/docket/USCG-2024-0190*). Next, click on the ''Subscribe'' email icon. We plan to use the same docket number for notices of all 2024 meetings of this Committee. When the next meeting notice is published and added to the docket, you will receive an email alert. In addition, you will receive notices of other items being added to the docket.

Dated: April 2, 2024.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2024–07697 Filed 4–10–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2024–0013; OMB No. 1660–NW150]

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for Information Sharing Agreements Involving Personal Identifiable Information and Sensitive Personal Identifiable Information

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 60-Day notice of new collection 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 a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning FEMA's sharing of information that includes personally identifiable information (PII) and sensitive personally identifiable information (SPII) of disaster survivors.

DATES: Comments must be submitted on or before June 10, 2024.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *http://www.regulations.gov* under Docket ID FEMA–2024–0013. Follow the instructions for submitting comments.

All submissions received must include the agency name and Docket ID. Regardless of the method used to 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: Audrey Carter, Government Information Specialist, FEMA, at 202–288–6421 or *audrey.carter@fema.dhs.gov.* 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: The Privacy Act of 1974 (Pub. L. 93–579, as amended) (5 U.S.C. 552a) establishes a Code of Fair Information Practice that governs the collection, maintenance, use, and dissemination of personally identifiable information about individuals that is maintained in systems of records by Federal Agencies.

The E-Government Act of 2002 (Pub. L. 107–347) (5 U.S.C. chapter 37; 44 U.S.C. 3501–3606) improves the management and promotion of electronic government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget (OMB), and by establishing a framework of measures that require using internet-based information technology to improve citizen access to government information and services, and for other purposes.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended), 42 U.S.C. 5121–5207 (''Stafford Act'') provides broad authority to the Federal Emergency Management Agency (FEMA) to carry out its mission of helping people before, during, and after disasters. FEMA shares information, to include PII and SPII, to meet the Agency's mission to: ''reduce the loss of life and property and protect our institutions from all hazards by leading and supporting the nation in a comprehensive, risk-based emergency management program of mitigation, preparedness, response, and recovery.'' As part of responding to requests to share information, FEMA engages in an interactive process with entities to determine the validity and scope of their data sharing request.

FEMA is creating this generic information collection to document the instruments FEMA uses to outline contractual sharing of protected information with external partners in disaster and non-disaster environments. This generic information collection will ensure all OMB-approved expiration dates are aligned across FEMA's Privacy Division and will also allow FEMA to update individual instruments as sub-collections under this generic instead of revising entire information collections and analyze individual instruments for burden reduction.

Collection of Information

Title: Generic Clearance for Information Sharing Agreements Involving Personal Identifiable Information and Sensitive Personal Identifiable Information.

Type of Information Collection: New information collection.

OMB Number: 1660–NW150.

FEMA Forms: Not applicable.

Abstract: The Federal Emergency Management Agency (FEMA) must collect information for points of contact within state, local, territorial, and Tribal governments, as well as the purpose, need, and authority for the personally identifiable information, to initiate legal agreements. Once finalized, these legal agreements permit sharing of disaster survivors' and insurance policyholders' data for response and mitigation efforts.

Affected Public: State, local or Tribal governments.

Estimated Number of Respondents: 817.

Estimated Number of Responses: 841.

Estimated Total Annual Burden Hours: 841.

Estimated Total Annual Respondent Cost: $46,238.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $100,240.

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. 2024–07659 Filed 4–10–24; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2024–0011; OMB No. 1660–0006]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Flood Insurance Program Policy Forms

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 a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information collected for the selling and servicing of National Flood Insurance Program (NFIP) policies by FEMA's direct servicing agent, NFIP Direct.

DATES: Comments must be submitted on or before June 10, 2024.

ADDRESSES: To avoid duplicate submissions to the docket, please submit comments at *www.regulations.gov* under Docket ID FEMA–2024–0011. 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: Joycelyn Collins, Underwriting Branch Program Analyst, Federal Insurance Directorate, at 202–701–3383 or *Joycelyn.Collins@fema.dhs.gov.* 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: The NFIP is authorized by the National Flood Insurance Act of 1968 (NFIA) (Pub. L. 90–448) and expanded by the Flood Disaster Protection Act of 1973 (Pub. L. 93–234). The NFIA requires FEMA to provide flood insurance at full actuarial rates, reflecting the complete flood risk to structures built or substantially improved, on or after the effective date for the initial Flood Insurance Rate Map for the community, so that the risks associated with buildings in flood-prone areas are borne by those located in such areas and not by taxpayers at large. In accordance with the Flood Disaster Protection Act of 1973, the purchase of flood insurance is mandatory when Federal or Federally-related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that participate in the NFIP.

FEMA proposes minor revisions to the existing paper forms completed by licensed insurance agents and the addition of a new electronic form that property owners can complete online.

Collection of Information

Title: National Flood Insurance Program Policy Forms.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0006.

FEMA Forms: FEMA Form FF–206–FY–21–117 (formerly 086–0–1), Flood Insurance Application; FEMA Form FF–206–FY–21–118 (formerly 086–0–2), Flood Insurance Cancellation/Nullification Request Form; FEMA Form FF–206–FY–21–119 (formerly 086–0–3), Flood Insurance General Change Endorsement, and FEMA Form FF–206–FY–24–103, e-Flood Insurance Application.

Abstract: Flood insurance policies are marketed through the facilities of licensed insurance agents or brokers in the various states, or property owners can apply for quotes online. Applications and quote requests are forwarded to a servicing company designated as fiscal agent by the Federal Insurance Administration (FIA). Upon receipt and examination of the application and required premium, the servicing company issues the appropriate Federal flood insurance policy.

Affected Public: Individuals or households; State, local or Tribal Government; Business or other for profit; Not-for-profit institutions; and Farms.

Estimated Number of Respondents: 184,273.

Estimated Number of Responses: 184,273.

Estimated Total Annual Burden Hours: 28,642.

Estimated Total Annual Respondent Cost: $1,235,903.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $8,817,913.

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. 2024–07655 Filed 4–10–24; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2423]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and

where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before July 10, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2423, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Deputy Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Escambia County, Florida and Incorporated Areas Project: 11–04–1993S Preliminary Date: November 29, 2023	
City of Pensacola	Inspection Services, 222 West Main Street, Pensacola, FL 32502.
Unincorporated Areas of Escambia County	Escambia County Development Services Department, 3363 West Park Place, Pensacola, FL 32505.
Deuel County, Nebraska and Incorporated Areas Project: 23–07–0056S Preliminary Date: December 17, 2021	
City of Chappell	City Hall, 757 2nd Street, Chappell, NE 69129.
Unincorporated Areas of Deuel County	Deuel County Clerk's Office, 718 3rd Street, Chappell, NE 69129.
Village of Big Springs	Village Office, 403 Pine Street, Big Springs, NE 69122.
Wayne County, Nebraska and Incorporated Areas Project: 19–07–0002S Preliminary Date: March 4, 2022	
City of Wayne	City Hall, 306 Pearl Street, Wayne, NE 68787.
Unincorporated Areas of Wayne County	Wayne County Courthouse, 510 Pearl Street, Wayne, NE 68787.
Village of Carroll	Community Hall, 502 Main Street, Carroll, NE 68723.
Village of Hoskins	Community Center, 101 South Main Street, Hoskins, NE 68740.
Village of Sholes	Village of Sholes Clerk's Office, 56187 Sholes Terrace, Randolph, NE 68771.

Community	Community map repository address
Village of Winside	Village Clerk's Office, 424 Main Street, Winside, NE 68790.

[FR Doc. 2024–07660 Filed 4–10–24; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6459–N–01]

Notice of HUD Vacant Loan Sales (HVLS 2024–2)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice of sales of reverse mortgage loans.

SUMMARY: This notice announces HUD's intention to competitively offer approximately 1,265 home equity conversion mortgages (HECM, or reverse mortgage loans) secured by vacant properties with an updated loan balance of approximately $346 million. The sale will consist of due and payable Secretary-held reverse mortgage loans. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse. The Secretary will prioritize up to 50 percent of the offered assets for award to nonprofit organizations or governmental entity bidders with a documented housing mission. This notice also generally describes the bidding process for the sale and certain entities who are ineligible to bid. This is the twelfth sale offering of its type and will be held on May 7, 2024.

DATES: For this sale action, the Bidder's Information Package (BIP) will be made available to qualified bidders on or about April 5, 2024. Bids for the HVLS 2024–2 sale will be accepted on the Bid Date of May 7, 2024 prior to 12:00 ET (Bid Date). HUD anticipates that award(s) will be made on or about May 10, 2024 (the Award Date).

ADDRESSES: To become an eligible bidder and receive the BIP for the December sale, prospective bidders must complete, execute, and submit a Confidentiality Agreement and Qualification Statement acceptable to HUD. The documents will be available in preview form with free login on the Transaction Specialist (TS), Falcon Capital Advisors, website: *http://www.falconassetsales.com.* This website contains information and links to register for the sale and electronically complete and submit documents.

If you cannot submit electronically, please submit executed documents via mail or facsimile to Falcon Capital Advisors: Falcon Capital Advisors, 427 N Lee Street, Alexandria, VA 22314, Attention: Glenn Ervin, HUD HVLS Loan Sale Coordinator. eFax: 1–202–393–4125.

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Office of Asset Sales, Room 3136, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000; telephone 202–708–2625, extension 3927 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: This notice announces HUD's intention to sell in HVLS 2024–2 due and payable Secretary-held reverse mortgage loans. HUD is offering 1,265 reverse mortgage notes with an updated loan balance of approximately $346 million. The mortgage loans consist of first liens secured by single family, vacant residential properties, where all borrowers are deceased, and no borrower is survived by a non-borrowing spouse.

In this offering, HUD also intends to offer a reverse mortgage loan secured by a New York single family property (''Mark House'') in Albany County that was listed on the National Register of Historic Places on August 29, 2022. This Mark House has a loan balance of approximately $337 thousand. HUD will accept bids from all eligible bidders who acknowledge the historical registration in the manner directed by HUD.

A listing of the mortgage loans will be included in the due diligence materials made available to eligible bidders. The mortgage loans will be sold without FHA insurance and with servicing released. HUD will offer eligible bidders an opportunity to bid competitively on the mortgage loans.

The Bidding Process

The BIP describes in detail the procedure for bidding in HVLS 2024–2. The BIP also includes the applicable standardized non-negotiable Conveyance, Assignment and Assumption Agreements for HVLS 2024–2 (CAAs). The CAAs will contain first look requirements, mission outcome goals, and the acknowledgment of the Mark House historical registration.

HUD will evaluate the bids submitted and determine the successful bids, in terms of the best value to HUD, in its sole and absolute discretion. If a bidder is successful, it will be required to submit a deposit which will be calculated based upon the total dollar value of the bidder's potential award. Award will be contingent on receiving the deposit in the timeframe outlined in the deposit letter. The deposit amount will be applied towards the purchase price at settlement.

This notice provides some of the basic terms of sale. The CAAs will be released in the BIP or BIP Supplement, as applicable. These documents provide comprehensive contractual terms and conditions to which eligible bidders will acknowledge and agree. To ensure a competitive bidding process, the terms of the bidding process and the CAAs are not subject to negotiation.

Due Diligence Review

The BIP describes how eligible bidders may access the due diligence materials remotely via a high-speed internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove mortgage loans from a sale at any time prior to the Award Date and the settlement date for the mortgage loans. HUD also reserves the right to reject any and all bids, in whole or in part, and include any unsold reverse mortgage loans from the HVLS 2024–2 sale in a later sale. Deliveries of mortgage loans will occur in conjunction with settlement and servicing transfer no later than 60 days after the Award Date.

The reverse mortgage loans offered for sale were insured by and were assigned to HUD pursuant to section 255 of the National Housing Act, as amended. The sale of the reverse mortgage loans is pursuant to HUD's authority in section 204(g) of the National Housing Act.

Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the reverse mortgage loans for this specific sale transaction. For the HVLS 2024–2 sale, HUD has determined that this method of sale optimizes HUD's return on the sale of these reverse mortgage loans, affords the greatest opportunity for all eligible bidders to bid on the reverse mortgage loans, and provides the quickest and most efficient vehicle for HUD to dispose of the due and payable reverse mortgage loans.

Bidder Ineligibility

In order to bid in HVLS 2024–2 as an eligible bidder, a prospective bidder must complete, execute, and submit a Confidentiality Agreement, a Qualification Statement (HUD–9611), and an Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), as applicable (collectively, for these bidders, the Qualification Statement (HUD–9611) and Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), as applicable, shall be defined as the Qualification Statement) that is acceptable to HUD. Eligible bidders seeking to be awarded loans on a priority basis must submit the Confidentiality Agreement, Qualification Statement (HUD–9611), and Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), and Housing Mission Supplemental Certification (collectively, for these bidders, the Qualification Statement (HUD–9611) and Addendum for Nonprofit and Government Pools and Sub-pools (HUD–9612), and Housing Mission Supplemental Certification shall be defined as the Qualification Statement), that is acceptable to HUD. In the Qualification Statement, the prospective bidder must provide certain representations and warranties regarding the prospective bidder, including (i) the prospective bidder's board of directors, (ii) the prospective bidder's direct parent, (iii) the prospective bidder's subsidiaries, (iv) any related entity with which the prospective bidder shares a common officer, director, subcontractor or sub-contractor who has access to Confidential Information as defined in the Confidentiality Agreement or is involved in the formation of a bid transaction (collectively the ''Related Entities''), and (v) the prospective bidder's repurchase lenders. The prospective bidder is ineligible to bid on any of the reverse mortgage loans included in HVLS 2024–2 if the prospective bidder, its Related Entities, or its repurchase lenders, are any of the following, unless other exceptions apply as provided for in the Qualification Statement.

1. An individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at 2 CFR parts 180 and 2424;

2. An individual or entity that is currently suspended, debarred, or otherwise restricted by any department or agency of the federal government or of a state government from doing business with such department or agency;

3. An individual or entity that is currently debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state, or local government agency, division, or department;

4. An entity that has had its right to act as a Government National Mortgage Association (''Ginnie Mae'') issuer terminated and its interest in mortgages backing Ginnie Mae mortgage-backed securities extinguished by Ginnie Mae;

5. An individual or entity that is in violation of its neighborhood stabilizing outcome obligations or post-sale reporting requirements under a Conveyance, Assignment and Assumption Agreement executed for any previous mortgage loan sale of HUD;

6. An employee of HUD's Office of Housing, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse;

7. A contractor, subcontractor, and/or consultant or advisor (including any agent, employee, partner, director, or principal of any of the foregoing) who performed services for or on behalf of HUD in connection with the sale;

8. An individual or entity that knowingly acquired or will acquire prior to the sale date material non-public information, other than that information which is made available to Bidder by HUD pursuant to the terms of this Qualification Statement, about mortgage loans offered in the sale;

9. An individual or entity which knowingly employs or uses the services of an employee of HUD's Office of Housing (other than in such employee's official capacity); or

10. An individual or entity that knowingly uses the services, directly or indirectly, of any person or entity ineligible under 1 through 10 to assist in preparing any of its bids on the mortgage loans.

The Qualification Statement has additional representations and warranties which the prospective bidder must make, including but not limited to the representation and warranty that the prospective bidder or its Related Entities are not and will not knowingly use the services, directly or indirectly, of any person or entity that is, any of the following (and to the extent that any such individual or entity would prevent the prospective bidder from making the following representations, such individual or entity has been removed from participation in all activities related to this sale and has no ability to influence or control individuals involved in formation of a bid for this sale):

(1) An entity or individual is ineligible to bid on any included reverse mortgage loan or on the pool containing such reverse mortgage loan because it is an entity or individual that:

(a) Serviced or held such reverse mortgage loan at any time during the six-month period prior to the bid, or

(b) Is any principal of any entity or individual described in the preceding sentence;

(c) Any employee or subcontractor of such entity or individual during that six-month period; or

(d) Any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such reverse mortgage loan.

In addition, for those eligible bidders seeking to be awarded mortgage loans on a priority basis and signing the Housing Mission Supplemental Certification, each prospective bidder must provide documentation and certify that its charitable or government purpose has a qualifying housing mission and that its participation in the sale is a furtherance of that housing mission.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding HVLS 2024–2, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or

individual loan, upon the closing of the sale of all the mortgage loans. Even if HUD elects not to publicly disclose any information relating to HVLS 2024–2, HUD will disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to HVLS 2024–2 and does not establish HUD's policy for the sale of other mortgage loans.

Julia R. Gordon,

Assistant Secretary for Housing—FHA Commissioner.

[FR Doc. 2024–07637 Filed 4–10–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24EG00COM0001; OMB Control Number 1028–0127]

Agency Information Collection Activities; Markup Application

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before June 10, 2024.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive. MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0127 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Gregory Cocks by email at *gjcocks@usgs.gov,* or by telephone at 303–202–4146.

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: In accordance with the PRA of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), 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.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. 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; and

(4) How the agency might 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 personally identifying information (PII) in your comment, you should be aware that your entire comment—including your PII—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: Markup Application is the name of the USGS National Geospatial Technical Operations Center project that allows citizen participation in volunteer map data collection activities for hydrography datasets.

Proposed Revision

For this ICR revision, the USGS will no longer be collecting data for the following: National Hydrography Dataset (NHD), Watershed Boundary Dataset (WBD), and National Hydrography Dataset Plus High Resolution (NHDPlus HR). We will transition to the 3D Hydrography Program (3DHP).

The USGS manages the 3DHP. The USGS also offers technical support and distributes authoritative hydrography data to the public as part of The National Map.

Markup Application allows citizens to submit proposed changes and corrections, called ''suggested edits,'' to the 3DHP. All submitted suggested edits, along with the user email contact, are saved in a dataset to be reviewed by USGS staff, or trusted stakeholders, for allowable edits and for validation. USGS staff or trusted stakeholders may contact the user submitting the suggested edit(s) via the recorded email address if further clarification is needed. Validated suggested edits go in a queue of edits to be incorporated into the 3DHP. The edits are made by USGS editors using internal editing tools/methods. No edits to the hydrography datasets take place within the Markup Application.

Title of Collection: Markup Application.

OMB Control Number: 1028–0127.

Form Number: None.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals/households.

Total Estimated Number of Annual Respondents: 113.

Total Estimated Number of Annual Responses: 1,936.

Estimated Completion Time per Response: Between 3 and 18 minutes depending on activity.

Total Estimated Number of Annual Burden Hours: Between 96 and 580 hours depending on activity.

Respondent's Obligation: Voluntary.

Frequency of Collection: Occasional.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person 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.*).

Kimberly Mantey,

Director, National Geospatial Technical Operations Center, U.S. Geological Survey.

[FR Doc. 2024–07667 Filed 4–10–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX24EB00A181100, OMB Control No. 1028–0101]

Agency Information Collection Activities; Submission to the Office of Management and Budget; The William T. Pecora Award Application and Nomination Process

AGENCY: Geological Survey, Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the U.S. Geological Survey (USGS) is proposing to renew an existing information collection without change.

DATES: Interested persons are invited to submit comments on or before May 13, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments by mail to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192 or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0101 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Sarah Cook by email at *scook@usgs.gov* or by telephone at 703–648–6136. 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 *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: We provide the general public and other federal agencies with an opportunity 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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 24, 2023 (88 FR 82395). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. 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; and

(4) How the agency might 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. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: The Pecora Award was established in compliance with the following authorities:

- Department of the Interior's Appropriations Act of 1992 (sec. 115 of H.R. 2686, Department of the Interior and Related Agencies Appropriations Act, 1992)
- President Obama's ''Guidance on the Use of Challenges and Prizes to Promote Open Government'' March 8, 2010.
- National Aeronautics and Space Administration (NASA)
  - Agency-Funded and Agency-Administered Prizes: NASA (42 U.S.C. 2459f–1)
  - 42 U.S.C. 2457, The National Aeronautics and Space Act of 1958, as amended
  - *42* U.S.C. 2458, The National Aeronautics and Space Act of 1958, as amended
  - *5* CFR part 451, Awards

The William T. Pecora Award is presented annually to individuals or teams using satellite or aerial remote sensing that make outstanding contributions toward understanding the Earth (land, oceans, and air), educating the next generation of scientists; informing decision makers; or supporting natural or human-induced disaster response. The award is sponsored jointly by the Department of the Interior and NASA.

The award was established in 1974 to honor the memory of Dr. William T. Pecora, former director of the U.S. Geological Survey and Under Secretary, Department of the Interior. Dr. Pecora was a motivating force behind the establishment of a program for civil remote sensing of the Earth from space. His early vision and support helped establish what we know today as the Landsat satellite program. The purpose of the award is to recognize individuals or groups working in the field of remote sensing of the Earth. National and international nominations are accepted from public and private sector individuals, teams, organizations, and professional societies.

Nomination packages include three sections: a cover sheet, a summary statement, and supplemental materials. The cover sheet includes professional contact information. The summary statement is limited to two pages and describes the nominee's achievements in the scientific and technical remote sensing community; contributions leading to successful practical applications of remote sensing; and/or major breakthroughs in remote sensing science or technology. Nominations may include up to 12 pages of supplemental materials such as a resume, a publications list, letters of endorsement, etc., which highlight the specific individual or group's achievements. These should be peer-reviewed and documented in industry-recognized and scientifically credible publications.

Title of Collection: The William T. Pecora Award Application and Nomination Process.

OMB Control Number: 1028–0101.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals, businesses, and other

academic and non-profit institutions; and state, local, and Tribal governments.

Total Estimated Number of Annual Respondents: 12.

Total Estimated Number of Annual Responses: 12.

Estimated Completion Time per Response: 6 hours.

Total Estimated Number of Annual Burden Hours: 72 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person is required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Timothy Newman,

Program Coordinator, National Land Imaging Program, USGS.

[FR Doc. 2024–07729 Filed 4–10–24; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[DOI–2023–0020; LLHQ260000.L10600000.PC0000.24X]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to modify the Bureau of Land Management (BLM) Privacy Act system of records, INTERIOR/LLM–37, Wild Horse & Burro Program System (WHBPS), to consolidate two systems of records, change the title to INTERIOR/BLM–37, Wild Horse and Burro Program (WHBP), and makes changes to all sections of the system of records notice (SORN) to reflect the expanded scope of the consolidated and modified system in accordance with the Office of Management and Budget (OMB) policy. This modified system will be included in DOI's inventory of record systems.

DATES: This modified system will be effective upon publication. New or modified routine uses will be effective May 13, 2024. Submit comments on or before May 13, 2024.

ADDRESSES: You may send comments identified by docket number [DOI–2023–0020] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2023–0020] in the subject line of the message.
- *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2023–0020]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ashanti Murphy-Jones, Acting Associate Privacy Officer, Bureau of Land Management, 1849 C Street NW, Room 5644, Washington, DC 20240, *blm_wo_privacy@blm.gov* or (202) 365–1429.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM created the Wild Horse and Burro Program (WHBP) to implement the Wild-Free Roaming Horses and Burros Act, passed by Congress in 1971. Broadly, the law declares wild horses and burros to be ''living symbols of the historic and pioneer spirit of the West'' and stipulates that the BLM and the U.S. Forest Service (FS) have the responsibility to manage and protect herds in their respective jurisdictions within areas where wild horses and burros were found roaming in 1971.

To maintain wild horses and burros in good condition and protect the health of our public lands, the BLM must manage the population growth of wild horse and burro herds. Without natural population controls, such as predation, herds can increase at a rate of up to 20 percent annually, doubling in size in just 4 to 5 years, if not appropriately managed. Population control must be implemented to protect scarce and fragile resources in the arid West and ensure healthy animals. To carry out this mission, the BLM controls herd growth through the application of fertility measures, such as birth control, and through the periodic removals of excess animals and the placement of those animals into private care.

The BLM manages the WHBP, which includes records on individuals covered by two SORNs. The INTERIOR/BLM–28, Adopt a Wild Horse, 51 FR 25111 (July 10, 1986), modifications published at 73 FR 17376 (April 1, 2008) and 86 FR 50156 (September 7, 2021), SORN covers the management of placing excess animals into private care through its adoption and sales programs. The INTERIOR/LLM–37, Wild Horse & Burro Program System (WHBPS), 72 FR 67956 (December 3, 2007), modifications published at 73 FR 17376 (April 1, 2008) and 86 FR 50156 (September 7, 2021), SORN covers the overall management, protection, and study of wild and free-roaming horses and burros on public lands in the United States.

During an annual review of these notices, the BLM determined that these two systems were managed by one system manager located in the WHBP Office, shared the same legal authorities, and generally had the same overarching purposes, categories of individuals and records, and retention. In an effort to streamline WHBP functions, improve consistency, and eliminate duplicative content, the BLM is proposing to consolidate these two systems of records into one, and change the system name from INTERIOR/LLM–37, Wild Horse & Burro Program System (WHBPS), to INTERIOR/BLM–37, Wild Horse and Burro Program (WHBP), to reflect the program-level management and clearly describe the records collected, used, and/or maintained in support of the overall WHBP. This notice also reorganizes the sections and provides updates to all sections to accurately reflect the scope of the new consolidated system of records in accordance with the Privacy Act of 1974 and OMB Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.* The INTERIOR/BLM–28, Adopt a Wild Horse, SORN will be rescinded after the publication and comment period for the new consolidated SORN.

This revised notice combines the records in the two previous systems of records under one program SORN; updates the system location to reflect a centralized point of contact for the program; updates authorities to properly cite to all the specific programmatic authorities for collecting, maintaining, using, and disseminating the information under the WHBP; adds a new section to describe the purposes of the system; expands on the categories of individuals and categories of records to more accurately reflect the types of individuals and administrative records contained within the system; updates the record sources to include a more inclusive list; provides updates for the storage, retrieval, safeguards, and

records retention schedules; and updates the record access, contesting, and notification procedures to incorporate instructions on submitting Privacy Act requests. This notice also makes general and administrative updates throughout to accurately reflect the management of the new consolidated system of records in accordance with OMB Circular A–108.

The existing routine uses are being updated from a numeric to alphabetic list and are being modified to provide clarity and transparency and reflect updates consistent with standard DOI routine uses. Additionally, DOI is proposing new routine uses to facilitate the sharing of information with agencies and organizations to promote the integrity of the records in the system or carry out a statutory responsibility of the DOI or Federal government.

Routine use A was slightly modified to further clarify disclosures to the Department of Justice or other Federal agencies, when necessary, in relation to litigation or judicial hearings. Routine use B was modified to clarify disclosures to a congressional office to respond to or resolve an individual's request made to that office. Routine use J was modified to allow DOI and the BLM to share information with appropriate Federal agencies or entities when reasonably necessary to respond to a breach of personally identifiable information and to prevent, minimize, or remedy the risk of harm to individuals or the Federal government in accordance with OMB Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information.* Routine use O was modified to describe the disposition of wild horses and burros including adoption, sale, transfer, death, or facility maintained.

Additionally, BLM is proposing new routine uses C through I, L through N, and P to facilitate the sharing of information with agencies and organizations to ensure the BLM can fulfill its responsibility to manage and protect herds in their respective jurisdictions within areas where wild horses and burros are found roaming, promote the integrity of the records in the system, or carry out a statutory responsibility of the BLM or Federal government. Routine use C facilitates the sharing of information with the Executive Office of the President to resolve issues concerning individuals' records. Routine use D provides additional clarification on external organizations and circumstances where disclosures are compatible with the purpose for which the records were compiled. Routine use E assists other Federal agencies with reconciling or reconstructing data files or responding to an inquiry by the individual to whom the record pertains. Routine use F allows the BLM to share information with agencies when relevant for hiring and retention or issuance of a security clearance, license, contract, grant, or benefit. Routine use G allows the BLM to share information with the National Archives and Records Administration (NARA) to conduct records management inspections. Routine use H allows the BLM to share information with external entities, such as State, territorial, and local governments, and Tribal organizations needed in response to court orders and/or for discovery purposes related to litigation. Routine use I allows the BLM to share information with an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system. Routine use L allows the BLM to share information with the OMB during the coordination and clearance process in connection with legislative affairs. Routine use M allows the BLM to share information with the Department of the Treasury to recover debts owed to the United States. Routine use N allows the BLM to share information with the news media and the public if there is a legitimate public interest in the disclosure of the information. Routine use P allows the BLM to share information with the FS regarding the disposition of FS-managed wild horses and burros cared for by the BLM, as part of the overall multiple-use mission under the authority of the 1971 Wild Free-Roaming Horses and Burros Act.

Pursuant to the Privacy Act, 5 U.S.C. 552a(b)(12), DOI may disclose information from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) to aid in the collection of outstanding debts owed to the Federal Government.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains, and the routine uses of each system. The INTERIOR/BLM–37, Wild Horse and Burro Program (WHBP), SORN is published in its entirety below. In accordance with 5 U.S.C. 552a, DOI has provided a report of this system of records to OMB and Congress.

III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/BLM–37, Wild Horse and Burro Program (WHBP).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the BLM, National Operations Center, Building 50, Denver Federal Center, Denver, CO 80225. Records may also be located at BLM headquarters, regional, State, district, and field offices responsible for managing the WHBP. A current listing of offices and contact information may be obtained by visiting the BLM website at *https://www.blm.gov/programs/wild-horse-and-burro/contacts.*

SYSTEM MANAGER(S):

Division Chief, Office of the Director, (Wild Horse and Burro), U.S. Department of the Interior, Bureau of Land Management, 201 Stephenson Pkwy, Ste. 1200, Norman, Oklahoma 73072.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Wild Free Roaming Horse and Burro Act of 1971, as amended, 16 U.S.C. 1331–40; The Federal Land Policy and Management Act, as amended, 43 U.S.C. 1701–87; 43 CFR part 4700, Protection, Management, and Control of Wild Free-Roaming Horses and Burros; and 31 U.S.C. 7701, Taxpayer identifying number.

PURPOSE(S) OF THE SYSTEM:

The primary purposes of the records are to:

(1) Identify individuals who have applied to obtain custody of a wild horse or burro through adoption, sale, or transfer;

(2) Document the rejection, suspension, or granting of the request for adoption, sale, or transfer;

(3) Monitor compliance with laws and regulations concerning maintenance of adopted and fostered animals;

(4) Identify contractors, employees, volunteers, and service providers required to perform program functions;

(5) Provide necessary program management information to other agencies involved in management of wild horses and burros on public lands: the FS and Animal and Plant Health Inspection Service (APHIS); and

(6) Identify and assign level of system access required by BLM employees, contractors, and program personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system includes applicants, individuals or organizations who have applied to adopt wild horse(s) and burro(s), adopted one or more wild horse(s) or burro(s), and bought wild horse(s) and burro(s) that meet sale criteria as outlined under law; foster care providers who have fostered one or more wild horse(s) or burro(s); and also includes Federal, State, and local government agencies and officials involved in the transfer of excess wild horse(s) and burro(s). This system also includes contractors and contract operators of facilities; veterinarians who are serving the program; volunteers; service providers; and BLM, FS, and APHIS employees with WHBP responsibilities. This system may also contain records on corporations and other business entities, which are not subject to the Privacy Act. However, records pertaining to individuals acting on behalf of corporations and other business entities may reflect personal information that may be maintained in this system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

The WHBP system of records contains paper and electronic records, which may include but is not limited to:

- WHBP titled adoption case files. These records contain non-serialized case files documenting adoptions that result in title to the animal being transferred by the BLM to individual or group adopters. Records consist of a private maintenance and care agreements, applications, adoption incentive program files, screening checklists, certificates of title, title eligibility letters, compliance records, body fat worksheets, receipts for payment of fees, facility certification for five or more animals, power of attorney forms, correspondence with adopters, reports of escape, theft, or death of adopted animals, and requests for replacement animals with veterinarian's statement. The WHBP system includes additional compliance documentation such as reports of inhumane treatment, investigation reports, compliance checks, inspections, photos and videos, notice of need for corrective action letters, citations, maintenance and care agreement letters, cancellation of agreement letters, records of repossession of animal, notices of violation, decision letters, and BLM Form 1842–1, Information on Taking Appeals to the Interior Board of Land Appeals.
- Untitled adoption case files. These records may include non-serialized case files documenting approved adoptions for which a request for title was never received. Records consist of private maintenance and care agreements, applications, adoption incentive program files, screening checklists, compliance records, body fat worksheets, receipts for payment of fees, facility certification for five or more animals, power of attorney forms, correspondence with adopters, reports of escape, theft, or death of adopted animals, requests for replacement animals with veterinarian's statement, and request to terminate agreements. These records may include additional compliance documentation as described in titled cases.
- Applications that do not result in adoption. These records may consist of applications, screening checklists, and related maps, correspondence, and duplicate adoption case files that are non-record copies of adoption documents.
- Animal preparation case files. These may consist of records documenting the physical examination, freeze-marking, and treatment of animals in preparation for private maintenance by adopters, as well lab tests, veterinarian certificates, veterinarian treatment records, health certificates, and other preparation records.
- Animal shipping case files. The animal case files may include bill of lading, shipping manifest, vehicle inspections, instructions to truck driver, diagram of trailer, hauling permits and licenses.
- Animal training facility case files. Training facility case files may consist of agreements with prisons or other training facility, training evaluation forms, training certificates, and daily training records.
- Adoption databases. The adoption databases support the WHBP and are accessible to authorized employees on their government furnished equipment. They contain information derived from hard copy records authorized for destruction.
- WHBP master file. The WHBP master file may contain information on the care animals are receiving, any changes in location of the animals, and documentation about the passage of animal title to the adopter. It also provides data that allows assessment of the short-term and long-term effects on public lands where wild horses and burros graze.

These records may contain the applicant's (individual) full name, address, home or cell phone number, and email; applicant's (Animal Group/Organization) name, tax identification or Federal Employer Identification Number, address of housed animals, phone number, and email address; assigned veterinarian's name, address, and phone number; Adopter or Foster's name, address, driver's license number, date of birth, Social Security number, home phone, alternate phone, email address, care facility owner's last name, physical facility address and phone number; and adoption location, adoption site codes, freeze-mark, signalment key, adoption key code, and adoption fee.

Records for BLM employees, contractors and other officials covered by this system contain contact and identification information such as name, job title, business address, email and phone number, job qualifications, certifications, services supplied, system access roles, and approval authorities. This information is necessary to administer the WHBP and identify suppliers of services or products needed for WHBP administration.

RECORD SOURCE CATEGORIES:

Information within the WHBP primarily comes from members of the public or animal groups or organizations

who have applied for adoption, adopted, fostered, or purchased a wild horse or burro. Information can also come from contractors and contract operators of facilities; veterinarians who are serving the program; volunteers; service and supply providers; and BLM, FS, and APHIS employees with WHBP responsibilities; and other sources related to services or support of the program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The U.S. Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, territorial, local, Tribal, or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, State, territorial, local, or Tribal or foreign agencies that have requested information relevant or necessary to the hiring, firing, or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To State, territorial, and local governments and Tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, DOI (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 DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI 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.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To organizations and individuals for the purpose of responding to requests about the government's operations as it pertains to the disposition of wild horses and burros to include adoption, sale, transfer, death, or specific facility.

P. To the FS regarding the disposition of FS-managed wild horses and burros cared for by the BLM WHBP as part of their overall multiple-use missions under the authority of the 1971 Wild Free-Roaming Horses and Burros Act.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records are contained in file folders stored within locked file cabinets located in restricted access areas at BLM district and field offices. Electronic records are stored on disk, system hard drives, tape, or other appropriate media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by applicant name, Social Security number, driver's license number, State, organization name, and freeze mark.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained under the Departmental Records Schedule (DRS), General Records Schedule (GRS), and BLM Records Retention Catalog, Schedule 4—Property Use and Disposal Records, Items 4/8a through 4/8g, 4/8i, and 4/8j(1), which was approved by NARA (N1–49–98–1, N1–49–90–1 and N1–049–09–4).The records disposition may be either temporary or permanent depending on the specific record. Temporary records include adoption records, applications, animal preparation, shipping and facility case files, and other related records that are

cutoff off at the end of the fiscal year then destroyed in accordance with the applicable disposition schedule. Approved destruction methods include shredding or pulping for paper records and degaussing or erasing for electronic records, in accordance with NARA guidelines and Departmental policy. WHBP master files have a permanent retention and are cutoff every five years then transferred to NARA.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security and privacy rules and policies. During normal hours of operation, paper records are maintained in secure cabinets and/or in secure file rooms under the control of authorized personnel.

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.;* Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.;* and the Federal Information Processing Standards 199: Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, passwords, multi-factor authentication, database permissions, firewalls, audit logs, network system security monitoring, and software controls.

Access to records in the system is limited to authorized personnel who have a need to access the records in the performance of their official duties, and each user's access is restricted to only the functions and data necessary to perform that person's job responsibilities. System administrators and authorized users are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior. A Privacy Impact Assessment was completed for the associated information system under the BLM WHBP to ensure that Privacy Act requirements are met, and appropriate privacy controls were implemented to safeguard the personally identifiable information contained in the systems.

RECORD ACCESS PROCEDURES:

An individual requesting access to their records should send a written inquiry to the applicable System Manager identified above. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS'' on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of their records should send a written request to the applicable System Manager as identified above. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR AMENDMENT'' on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records about them should send a written inquiry to the applicable System Manager as identified above. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT INQUIRY'' on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

72 FR 67956 (December 3, 2007); modification published at 73 FR 17376 (April 1, 2008), and 86 FR 50156 (September 7, 2021).

Teri Barnett,

Departmental Privacy Officer, U.S. Department of the Interior.

[FR Doc. 2024–07738 Filed 4–10–24; 8:45 am]

BILLING CODE 4130–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037737; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Missouri Museum of Anthropology, Columbia, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Missouri Museum of Anthropology has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 13, 2024.

ADDRESSES: Candace Sall, University of Missouri Museum of Anthropology 1020 Lowry Sreet, Columbia, MO 65211, telephone (573) 882–9157, email *nagpra@missouri.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Missouri Museum of Anthropology, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing at least, 457 individuals have been reasonably identified and 38,132 associated funerary objects from 57 sites (see site descriptions). In the 1950s and 1960s, American Archaeology Division at the University of Missouri completed several surveys and excavations under contract for the National Park Service, and later for the Corps of Engineers, in Benton, Cedar, Dade, Henry, Hickory, Polk and St. Clair Counties, Missouri. In 2009, the Kansas City Corps of Engineers determined the work on these sites occurred before land was purchased and control of the collection was passed to the University of Missouri Museum of Anthropology.

23BE3, Wray-Martin Mound I, Benton County, Missouri. This site contains 16 individuals, including one child (aged 6–8 years.), one infant, one adolescent (aged 14–16.5 years), 12 adults, one adult male, excavated in 1963 by W. Raymond Wood and UMC staff as part of the Harry S. Truman Dam and Reservoir project. This site also contains 341 associated funerary objects, including 131 debitage, one hammerstone, 11 misc. shells, one shell bead, two soil samples, one bone awl in two parts, one cut/modified wolf maxilla, one gouge, 28 projectile point/knife (including one oval knife, one Scallorn point, two Rice side notched points), 22 bifaces, six misc. stone, 134 misc. faunal fragments, one flake tool (uniface scraper), and one drill.

23BE6, Fairfield Mound, Benton County, Missouri. This site contains 43 individuals, including 28 adults, two adult females, three adult males, three children (aged 1–3, 1–3, 5–9 years), two adolescents (both aged 8–14 years), four infants, and one individual, excavated in 1958–1964 by W. Raymond Wood and UMC staff as part of the Harry S. Truman Dam and Reservoir project. This site also contains 4,054 associated funerary objects, including 101 ceramic fragments, 2,162 debitage, 106 misc. shell fragments, 830 misc. faunal fragments, 27 cores, seven groundstones, two mano, one stone abrader, two hammerstones, two soil samples, 51 shell beads, 69 bone beads, 26 utilized flakes/expedient tools, four drills, 177 bifaces, 328 projectile points/knife, one bone awl, one bone tool, 15 hematite, 90 misc. stone (including five calcite), five pollen samples, one sandstone, one shell gorget, 17 glass fragments, two wood (including one copper stained piece of wood), one seed, one fossil, 21 metal fragments, one metal button, and two charcoal samples.

23BE108, No site name, Benton County, Missouri. This site contains one adult, excavated by UMC staff in 1960, as part of the Harry S. Truman Dam and Reservoir Project. This site also contains 4,501 associated funerary objects, including 3,360 misc. faunal fragments, 532 misc. stone, one projectile point/knife, 141 misc. shell, 416 debitage, one historic ceramic fragment, eight charred wood, eight seeds, three soil samples and 21 charcoal samples, and 10 metal fragments.

23BE117, Karr's Camp Mound, Benton County, Missouri. This site contains nine individuals, including six adults, one infant, one child (aged 4–8 years); and one individual, excavated by UMC W. Raymond Wood and UMC staff 1962–1963 as part of the Harry S. Truman Dam and Reservoir Project. This site also contains 253 associated funerary objects, including 83 debitage, two flake tools (including a possible scraper), six bifaces, one drill, 16 projectile point/knives (including seven Scallorn points, two Cooper points, two Rice side notched points), three hematite, five misc. shell, 13 shell beads (including two conch shell disc beads, one Anculosa bead), two bone beads, two worked bone objects, two wood fragments, 101 misc. faunal fragments, and 17 misc. stone.

23BE118, Devil's Bluff Mound, Benton County, Missouri. This site contains one adult, excavated by Rolland E. Pangborn and University of Missouri staff in 1964 as part of the Harry S Truman Dam and Reservoir project. This site also contains 124 associated funerary objects, including 82 debitage, two bifaces, 10 projectile point/knives (including three Rice side notched points, one ''other dart'', two dart point tips, four Scallorn points), three ground hematite, two misc. stone, two misc. shell, five snail shell, nine misc. faunal fragments, two bone beads, one soil sample, three pollen samples, one (charred) wood, and two charcoal samples.

23BE120, Cairn Bluff, Benton County, Missouri. This site contains one adult, excavated by University of Missouri staff as part of the Harry S Truman Dam and Reservoir project in 1962 by Rolland Pangborn, Donna Roper, and University of Missouri staff for contract DACW41–77–C–0132. This site also contains two associated funerary objects, including one hafted biface and one hematite.

23BE128, Wray-Martin Mound 2, Benton County, Missouri. This site contains six individuals, including four adults, one child (aged 2–6 years), and one adolescent, excavated in 1963 by W. Raymond Wood, Edward Sudderth, and University of Missouri staff as part of the Harry S Truman Dam and Reservoir project. This site also contains 144 associated funerary objects, including 27 debitage, one flake tool, 10 bifaces, 11 projectile points/knife, two ground hematite, one misc. stone, one gastropod/snail, four charcoal samples, one soil sample, 15 dog faunal fragments remains (including one dog mandible with teeth), three copper beads, five bone beads, one misc. shell, two Anculosa shell beads, four historic ceramics, one drill, and 55 misc. faunal fragments.

23BE135, Melanin Mound 1, Benton County, Missouri. This site contains eight individuals, including seven adults and one child (aged 2–3 years), excavated by W. Raymond Wood and University of Missouri staff in 1964 as part of the Harry S Truman Dam and Reservoir project. This site also contains 245 associated funerary objects, including 10 Anculosa shell beads, seven projectile points/knife (including one knife fragment), 32 misc. faunal fragments, two bone beads, two bifaces, one flake tool, one groundstone fragment, 151 debitage, 12 misc. stone, one soil sample, two pollen sample, and 24 charred hickory nutshell fragments.

23BE136, Melanin Mound 2, Benton County, Missouri. This site contains 12 individuals, including nine adults, one adult male, one child (aged 2–4 years), and one juvenile, excavated by W. Raymond Wood and University of Missouri staff in 1964 as part of the Harry S Truman Dam and Reservoir project. The site also contains 357 associated funerary objects, including 58 debitage, two hematite, one groundstone fragment, 45 misc. stone, three limonite, 29 misc. shell, one gastropod/snail shell, 11 soil samples, 13 projectile point/knife (including eight Rice side notched points, two chipped stone knife fragments, one projectile point base), one charcoal sample, 12 biface fragments, 93 dog faunal fragments remains, five polished bone objects, and 83 misc. faunal fragments.

23BE137, Barren Cairn, Benton County, Missouri. This site contains five individuals, including four adults and one child (aged less than 5 years), excavated by Rolland E. Pangborn and University of Missouri staff in 1964 as part of the Harry S Truman Dam and Reservoir project. This site also contains 88 associated funerary objects, including 17 debitage, 15 flake tools, two projectile points/knife, 22 biface, one groundstone, one hematite, one limonite, two soil samples, three pollen samples, and 24 misc. faunal fragments.

23CE32, Buck's Cave, Cedar County, Missouri. This site contains one individual, excavated by R. Bruce McMillan, Rolland E. Pangborn, and University of Missouri staff in 1965 as part of the Hackleman Corner Reservoir project. This site also contains 246 associated funerary objects, including 159 debitage, 51 misc. shell, one charcoal sample, and 35 misc. faunal fragments.

23CE104, Simmons Mound, Cedar County, Missouri. This site contains six individuals, including five adults and one child, excavated in 1961 by Carl H. Chapman and University of Missouri staff as part of the Stockton Lake/Reservoir project. This site also contains 133 associated funerary objects, including 41 debitage, nine misc. stone, two charcoal samples, two soil samples, two cores, two bifaces, two scrapers, two unifaces, one drill, 25 misc. faunal fragments, two coyote claws, 33 projectile points (including 28 Scallorn points, one Rice side notched point, one Gary point, three projectile points), and 10 ceramic fragments.

23CE111, Mache Hollow Shelter, Cedar County, Missouri. This site contains one adult, excavated in 1963 by W. Raymond Wood, Rolland E. Pangborn, and University of Missouri staff as part of the Stockton Lake/Reservoir project. This site also contains eight associated funerary objects, including eight misc. faunal fragments.

23CE119, Coy Jones Farm Cabin Cairn, Cedar County, Missouri. This site contains one adult, excavated in 1961 by W. Raymond Wood, Rolland E. Pangborn, and University of Missouri staff as part of the Stockton Lake/Reservoir project. This site also contains one associated funerary object, including one misc. faunal fragments.

23CE122, Clemons Mounds, Cedar County, Missouri. This site contains 27 individuals, including 12 adults (two of which are possibly male), 14 children, and one infant, excavated by W. Raymond Wood, Rolland E. Pangborn, R. Bruce McMillan, and University of Missouri staff 1962–1963 as part of the Stockton Reservoir Project. This site also contains 565 associated funerary objects, including 233 debitage, 42 ceramic fragments (including one historic ceramic), one drill, four bifaces, 11 cores, 45 misc. stone, eight limestone, 123 misc. faunal fragments, two groundstones, five shell beads, 16 bone bead, 16 snail shells, two flake tools, and 57 projectile points (including 13 Rice side-notched points, 33 Cooper points, one knife, one Guffy-like point, one Fresno point, three darts, one table rock stem, and one other hafted).

23CE123, Broyles Cairn, Cedar County, Missouri. This site contains four individuals, including one adult, one adolescent (aged 9.5–14.5 years), one child (aged 7.5–12.5 years), and one infant (aged 1.5–2 years), collected by Carl Chapman and University of Missouri staff 1961 as part of the Stockton Reservoir Project. This site also contains 643 associated funerary objects, including 110 debitage, nine biface, 17 misc. stone, 42 misc. shells, 150 shell beads (including 135 Anculosa shell beads), 21 bone beads (including 11 larger disk beads previously labeled as tubular beads and five tubular beads), 176 misc. faunal fragments, 26 projectile points (including four Scallorn points, seven Huffaker points, two Washita points, one hafted biface, one Fresno point, eight Cahokia points and four Rice side-notched points), five bone pin fragments, one celt, one mano, 52 ground hematite, 27 ceramic fragments, two ceramic (pipe) fragments, two seeds, one groundstone, and one hammerstone.

23CE135, Little Mound, Cedar County, Missouri. This site contains one individual, collected from the surface in 1964 as part of the Stockton Reservoir Project. This site also contains five associated funerary objects, including one mano, one metate, one axe fragment, and two debitage.

23CE141, DeGraffenreid Mound, Cedar County, Missouri. This site contains one adult, excavated by Rolland Pangborn and University of Missouri staff 1964 as part of the Stockton Reservoir Project. This site also contains 11 associated funerary objects, including one biface, two debitage, and eight misc. faunal fragments.

23CE148, Umber Point Mound, Cedar County, Missouri. This site contains 24 individuals, including 11 adults, two adult females, six children, and five infants, excavated by W. Raymond Wood, Rolland Pangborn, and University of Missouri staff 1965 as part of the Stockton Reservoir Project. This site also contains 515 associated funerary objects, including 35 projectile points (including four Rice side-notched points, two Scallorn points, one Cupp type point, one other point), one biface, three flake tools, one core, 225 debitage, 15 misc. stone, one sandstone, two hematite, 14 fragments of groundstone pipe, 38 shell beads (including 12 Marginella, 15 Anculosa, three tubular conch shell), one ceramic fragment, two drill, one groundstone, four mano, five ochre, 145 misc. faunal fragments, one bone awl, four polished bone objects, two worked bone objects, two bone beads, two turtle carapaces, three charred wood, one nutshell, two soil samples, three pollen samples, and two misc. shells.

23CE150, Sorter's Bluff Mound, Cedar County, Missouri. This site contains 27 individuals, including 12 adult, three adult males, three adult females, one adolescent, five children, and three infants, excavated by W. Raymond Wood, Rolland Pangborn, and University of Missouri staff, 1965, as part of the Stockton Reservoir Project. This site also contains 820 associated funerary objects, including five projectile points (including one Scallorn point, one Reed point, one other point, two Harrel Cahokia points), 115 debitage, one biface, 11 misc. stone, 185 misc. faunal fragments, 18 seeds, five soil samples, one ceramic fragments, 319 shell beads (including 19 periwinkle, six conch disc, one Olivella, 42 Anculosa, 50 Marginella), 36 worked bone objects (including one spatulate), one turtle shell bowl, one mano, two groundstones, five stone axes, one ochre, 11 antler tools, two bone beads, 99 misc. shell, and two shell objects.

23CE152, Bowling Stone Mound, Cedar County, Missouri. This site contains eight individuals, including one adult male, four adults, one adolescent, one child, and one infant, excavated in 1965 by W. Raymond Wood and University of Missouri staff as part of the Stockton Lake/Reservoir archaeological salvage project. This site also contains 1,105 associated funerary objects, including 126 debitage, one groundstone fragment, five limestone, one misc. stone, three bifaces, six misc. shell, 426 ceramic fragments, four pollen samples, nine deer bone tool fragments, one shell brooch, two partially reconstructed celts, two partially reconstructed mano, 448 misc. faunal fragments, five Scallorn points, and 66 botanical seeds (including three nutshells and five charred corn kernels).

23CE155, Hogback Cairn, Cedar County, Missouri. This site contains seven individuals, including one adult female, four adults, and two children (aged 3–5 and 6–10 years), collected by Robert Bray, and UMC staff 1954 as part of the Stockton Reservoir Project. Based on archives, this is the same site as 23CE34. This site also contains 46 associated funerary objects, including seven debitage, two sandstone, 11 misc. stone, 23 misc. faunal fragments, one biface, and two misc. shell.

23CE190, Amity Mound, Cedar County, Missouri. This site contains three individuals, including two adults and one child, collected by Bruce McMillan, Rolland Pangborn, and University of Missouri staff in 1964, as part of the Hackleman Corner Reservoir

project. This site also contains 468 associated funerary objects, including two debitage, one hematite, 169 misc. stone, one ochre, one ceramic fragments, 92 misc. faunal fragments, 198 misc. shell, two fossils, one charcoal sample, and one iron hook.

23CE198, Alberta Mound, Cedar County, Missouri. This site contains two individuals, including one adult and one child, excavated by Bruce McMillan, Rolland Pangborn and University of Missouri staff in 1964 as part of the Hackleman Corner Reservoir project, which was never built. This site also contains 364 associated funerary objects, including 75 misc. faunal fragments, four shell bead fragments (conch), 40 misc. shell, 105 debitage, 133 misc. stone, three groundstone pipe fragments, three cores, and one possible knife tip.

23DA201, Morgan Mound, Dade County, Missouri. This site contains 14 individuals, including six adults, six children, one infant, and one individual, excavated by W. Raymond Wood, Rolland Pangborn, and University of Missouri staff in 1965 as part of the Stockton Reservoir project. This site also contains 30 associated funerary objects, including 21 debitage, two misc. faunal fragments, one projectile point, two misc. stone, two sandstone, and two misc. botanicals.

23DA216, Sand Bluff Cairn, Dade County, Missouri. This site contains one individual, excavated in 1964 by R. Bruce McMillan and the University of Missouri staff as part of the Stockton Lake/Reservoir archaeological salvage project. This site also contains 340 associated funerary objects, including 253 debitage, three misc. stone, one misc. faunal fragments, three flake tools, six dart points, one other biface, one core, 45 ceramic fragments, 21 hafted bifaces (including 13 Scallorn points, five Rice side notched points, one Marshall point, one Standlee Langtry point, one Guffy-like point), one corn kernel, one misc. seed, one galena, and three charcoal samples.

23DA219, Matthews Cairn/Mound, Dade County, Missouri. This site contains 14 individuals, including seven adults, one adult male, one adolescent (aged ~14 years), and five children (aged 3–6, 8–9, 10–13, 8–14 and 7–12 years), excavated by W. Raymond Wood and University of Missouri staff in 1964 as part of the Stockton Reservoir project. This site also contains 619 associated funerary objects, including 62 debitage, two flake tool, four misc. stone, one ochre, 19 bone beads, 52 misc. shell, one gastropod/snail, 53 shell beads, three pollen samples, eight projectile point/knife, three bifaces, one sandstone abrader, one misc. sandstone, six bone awls, two worked bone tools, one elbow pipe fragment, one jar, 63 ceramic fragment, three mano, 61 seeds (including approximately one oz burned nutshells and four charred corn kernels), four soil samples, two charcoal samples, and 266 misc. faunal fragments.

23DA221, Comstock Mound, Dade County, Missouri. This site contains one adult female, excavated by W. Raymond Wood and University of Missouri staff in 1964 as part of the Stockton Reservoir project. This site also contains 919 associated funerary objects, including 24 ceramic fragments, two flake tools, 14 bifaces, nine projectile points, one groundstone (nuttingstone), 42 misc. faunal fragments, two rolled silver metal items, three copper fragments, 12 shell beads (thin tubes), 632 glass/porcelain beads, two pollen samples, and 176 debitage.

23DA222, Tunnel Bluff Mound, Dade County, Missouri. This site contains 13 individuals, including four adults, two adolescents (aged 9–14 and 16–18 years), four children (aged 2–3, 3.5–5, 5–7 and 9.5–11 years), two infants (aged 6 months-2 years), and one fetal infant, excavated by W. Raymond Wood and University of Missouri staff in 1964 as part of the Stockton Reservoir project. This site also contains 308 associated funerary objects, including 73 debitage, 26 misc. faunal fragments, 12 misc. sandstone, two sandstone slabs, 52 bone tool fragments, 25 bone beads, three pollen samples, 10 Scallorn points, five other points, five bifaces, one drill, four ceramic fragments, two groundstone pipes, five mano, one hammerstone, one hematite, two turtle shell bowls, 37 misc. shell, 40 shell beads, one misc. stone, and one soil sample.

23DA225, Bunker Hill Mound, Dade County, Missouri. This site contains 29 individuals, including one adult female, nine adults, 14 children, and five infants, excavated by W. Raymond Wood, Rolland Pangborn, and University of Missouri staff in 1964 as part of the Stockton Reservoir project. This site also contains 1,019 associated funerary objects, including 125 debitage, seven flake tools, 13 bifaces, 20 projectile point/knife (including two Scallorn points), one drill, seven misc. stone, 298 shell beads, one hematite, two groundstone pipes, one celt, one mano, one worked bone awl, two bone beads, 16 worked bone tools, seven soil samples, 48 misc. faunal fragments, three turtle shells, one charred wood, 123 ceramic fragments, six misc. shell, and 336 botanical (including 140 charred hickory and hazelnut nuts and 192 charred corn kernels).

23DA226, Divine Mound, Dade County, Missouri. This site contains 30 individuals, including nine adult males, 10 adults, three individuals, six children, two infants, excavated by W. Raymond Wood, Rolland Pangborn, and University of Missouri staff in 1964 as part of the Stockton Reservoir project. This site also contains 666 associated funerary objects, including 25 debitage, nine bifaces, 12 hematite, three hammerstones, 28 misc. shell fragments, seven shell beads, three shell gorget, three soil samples, two pollen samples, one mano, one misc. stone, one greenstone celt, one bone bead, four bone tool fragments, one tip of a deer ulna tool, one fragment of large bone spatulate, three bone awl, three modified turtle fragments, 16 projectile points/knife (including one knife, seven Scallorn points, one WRE point, one other point), one clay pipe, two groundstone pipes, 296 misc. faunal fragments, 190 faunal remains from dog burial, 47 ceramic fragments, and six seeds.

23DA237, Turnback Cairn, Dade County, Missouri. This site contains one adult, excavated by W. Raymond Wood and UMC staff in 1964 as part of the Stockton Reservoir project. This site also contains 114 associated funerary objects, including 79 debitage, one pebble chopper/uniface, seven bifaces, one drill, 13 projectile point/knives (including one Marshall point, two Scallorn points, five Reed points, one Keota point, one Guffy-like point, one dart; two misc. hafted bifaces), one groundstone mano, three misc. stone, eight wood, and one pollen sample.

23DA246, Paradise Tree Mound, Dade County, Missouri. This site contains 11 individuals, including two adult males, one adult female, two adults, two adolescents, three children, and one infant, excavated by W. Raymond Wood and University of Missouri staff in 1965 as part of the Stockton Reservoir project. This site also contains 334 associated funerary objects, including 88 debitage, two hematite, one limestone, 20 misc. shell, three soil samples, three pollen samples, seven projectile points (including two corner notched dart points, one Scallorn point, and four Rice side notched points), two ceramic fragments, one ceramic pipe (four fragments), one bone spatulate (broken), 16 bone spatulate fragments, one bone awl, four bone beads, two biface fragments, 163 shell beads, two misc. stone, 16 misc. faunal fragments, one wood, and one charcoal sample.

23DA250, Eureka Mound, Dade County, Missouri. This site contains

three individuals, including one male, one female, and one child, excavated by W. Raymond Wood and University of Missouri staff 1964–1965 as part of the Stockton Reservoir project. This site also contains 228 associated funerary objects, including 42 misc. faunal fragments (including one deer antler, one deer ulna, three deer scapulae, 16 fresh water drum teeth, one deer tibia), one chert pebble hammerstone, eight bifaces, six flake tools, one core, six projectile points, five bone pin fragments (including one stained green), one groundstone, 27 ceramic fragments, 118 debitage, nine copper fragments, one charcoal sample, two pollen samples, and one Spiro engraved water bottle dated A.D. 1000–1450.

23DA269, No site name, Dade County, Missouri. This site contains one adult, collected by P. Nichols, and Espey, Huston and Associates in 1967 as part of the Stockton Reservoir Project. This site also contains one associated funerary object, including one drill.

23HE1, Don Bell Site, Henry County, Missouri. This site contains one individual, excavated in 1950 by University of Missouri staff. Part of the Harry S Truman Reservoir collection. This site also contains 156 associated funerary objects, including one misc. stone, one soil sample, and 154 ceramic fragments.

23HE139, Mandrake Mound, Henry County, Missouri. This site contains 13 individuals including, six adults, three adult males, two juveniles, one child (aged 2–4 years), and one adolescent (aged 12–13 years), excavated by W. Raymond Wood, Rolland Pangborn, and University of Missouri staff as part of the Harry S Truman Reservoir project. This site also contains 45 associated funerary objects, including 22 debitage, four sandstone, two misc. stone, five misc. shells, seven soil samples, three misc. faunal, and two pollen samples.

23HE145, Chauncey Site, Henry County, Missouri. This site contains one adult (possibly female), excavated by W. Raymond Wood, Rolland Pangborn, and University of Missouri staff in 1962 as part of the Harry S Truman Reservoir Project. This site also contains 16 associated funerary objects, including one groundstone mano/hammerstone, one curved knife, one double pointed flint tool, 11 misc. faunal fragments (including one beaver tooth), and two soil samples.

23HE147, Gobbler's Knob Cairn, Henry County, Missouri. This site contains five individuals, including two adults, one adult female, one adult male, and one infant, excavated by W. Raymond Wood, Rolland Pangborn and UMC staff in 1962 as part of the Harry S. Truman Reservoir project. This site also contains 112 associated funerary objects, including 33 debitage, two biface, eight misc. stone, three ochre, five wood, one nutshell, eight misc. shell, 39 misc. faunal fragments, one metal fragment, one charcoal sample, one fossil, six pollen samples, and four soil samples.

23HE148, Ilo Cairns, Henry County, Missouri. This site contains two individuals, including one adult and one child (aged 3–5 years), excavated in 1960 by W. Raymond Wood, Rolland Pangborn, and University of Missouri staff as part of the Harry S Truman Reservoir project. This site also contains 278 associated funerary objects, including 121 debitage, one core, one scraper, two bifaces, one Scallorn point, eight sandstones (one is tear-drop shaped and one is bipointed), seven misc. stone, one limestone, two soil samples, 62 gastropods, 65 misc. faunal fragments, six seeds, and one charcoal sample.

23HE150, Eckardt Cairn, Henry County, Missouri. This site contains 15 individuals, including one adolescent (aged 11–14 years), 10 adults, one adult male, and three individuals, excavated by W. Raymond Wood, Rolland Pangborn, and UMC staff in 1968 as part of the Harry S. Truman Reservoir project. This site also contains 554 associated funerary objects, including 41 debitage, two cores, 6 projectile points (including four Scallorn points and two rice side notched points), one clay pipe, 14 misc. stone, 339 misc. faunal fragments, one groundstone fragment, one gorget, 49 shell beads (including 35 Anculosa, four conch, five Marginella, six tubular), three bone awls, three flake tool (including one scraper), one biface, one misc. shell, two bone beads, four botanical (including pecan shell), 22 crinoid beads, one pollen sample, 49 fossils, 13 limestone, and one soil sample.

23HI18, Lytle Cairn, Hickory County, Missouri. This site contains one adult, excavated by W. Raymond Wood and University of Missouri staff in 1958 as part of the Harry S Truman Reservoir project. This site also contains 478 associated funerary objects, including 216 debitage, four bifaces, three misc. shell, 203 misc. faunal fragments, 33 ceramic fragments, one hematite, five misc. stone, eight projectile points, one flake tool, and four shell disk beads.

23HI30, Mount Indian Cairn/Murelle Mound, Hickory County, Missouri. This site contains six individuals, including three adults and three children, excavated in 1957 by W. Raymond Wood and University of Missouri staff as part of the Pomme de Terre/Harry S Truman Reservoir projects. This site also contains 931 associated funerary objects, including five ceramic vessels, 27 bifaces, 425 debitage, 74 ceramic fragments, six projectile points, one core, 29 hematite, one misc. stone, one sandstone, two ochre, 244 misc. faunal fragments, three canid teeth, seven flake tools, 63 misc. shell, and 43 shell beads.

23HI87, No site name, Hickory County, Missouri. This site contains one individual, collected by W. Raymond Wood and UMC in 1957 as part of the Harry S Truman Reservoir project. This site also contains nine associated funerary objects, including nine misc. faunal fragments.

23HI149, Cave Knob Mound, Hickory County, Missouri. This site contains three individuals, including one adult and two children (aged 3 and 8–13 years), excavated by W. Raymond Wood and UMC staff as part of the Harry S. Truman Reservoir project. This site also contains 258 associated funerary objects, including one red ceramic fragment, 10 bifaces, two drills, 10 projectile points (including two Rice sided notched points, one Scallorn points, two projectile point bases, one chert knife), one sandstone mano, 33 misc. faunal fragments (including one modified wolf maxilla, three unmodified deer teeth), 156 utilized flakes, one core, and 44 debitage.

23HI172, Blackwell Cave, Hickory County, Missouri. This site contains one adult, Collected by Carl Falk and UMC staff in 1966 as part of the Pomme de Terre Reservoir project. This site also includes 11,127 associated funerary objects, including 8,354 misc. faunal fragments, 1,738 debitage, 19 misc. stone, 791 misc. shell, 22 bifaces, 15 hafted bifaces, two drills, three hematite, one wood, three worked bone objects, 20 charcoal samples, eight uniface, seven cores, 53 misc. botanical, 75 ceramic fragments, one ochre, 14 pollen samples, and one glass.

23PO165, Star Ridge Cairn, Polk County, Missouri. This site contains two individuals, including one adult and one child, excavated by W. Raymond Wood and University of Missouri staff in 1957–1958 as part of the Pomme de Terre Reservoir project. This site also contains 93 associated funerary objects, including 20 debitage, four sandstones, one shell bead, two groundstone fragments, 65 misc. faunal fragments, and one hafted biface.

23PO300, Madrigal Mound, Polk County, Missouri. This site contains 19 individuals, including 10 adults, one adult female, two infant, three children, and three adolescents, excavated by W. Raymond Wood and University of Missouri staff in 1962 as part of the

Stockton Reservoir project. This site also contains 545 associated funerary objects, including 103 ceramic fragments, nine bags of charred corn kernels, 15 debitage, two flake tool, one ground hematite, one biface, two sandstone, two misc. stone, 30 misc. faunal fragments, two gastropod/snail, nine misc. shell, 321 shell beads, six wood, one bone bead, eight soil samples, two pollen samples, nine projectile point/knife, one mano, five bone awl fragments, and 16 fragmented bone/antler bracelet segments.

23PO301, Petite Cote Cairn, Polk County, Missouri. This site contains one adult, excavated by W. Raymond Wood and University of Missouri staff in 1963 as part of the Stockton Reservoir project. This site also contains 251 associated funerary objects, including 199 misc. faunal fragments, three soil samples, 38 debitage, one misc. stone, two lead objects, one Huffaker point, one biface, two brass fragments, and four misc. shells.

23PO304, Cordwood Cairn, Polk County, Missouri. This site contains six individuals, including one infant, two children, and three adults, excavated by W. Raymond Wood and University of Missouri staff in 1963 as part of the Stockton Reservoir project. This site also contains 616 associated funerary objects, including 44 debitage, 23 flake tools, three soil samples, two bifaces, five projectile points/knife, 100 misc. faunal fragments, three ceramic fragments, one gastropod, 433 shell beads, and two dolomite ear spools.

23PO306, Slick Rock Mound, Polk County, Missouri. This site contains 21 individuals, including two infants, two children (aged 10–12, 5–7 years), one adolescent (aged 12–16 years), nine adults, three adult males, and four adult females, excavated by W. Raymond Wood and University of Missouri staff 1962–1963 as part of the Stockton Reservoir project. This site also contains 423 associated funerary objects, including nine ceramic fragments, 94 debitage, 25 flake tools, 13 limestone, 18 misc. stone, four sandstone, two bifaces, seven misc. shell, three seeds, one wood, 106 misc. faunal fragments, four soil samples, two drills, two bone awl fragments, three bone pins, eight shell tool fragments (two rings, six worked shell), 115 shell beads, one core, and six projectile points.

23PO307, King's Curtain Mound, Polk County, Missouri. King's Curtain Mound. This site contains 18 individuals, including one juvenile, one infant, three children (aged 2–6, 6–10, 9–12 years), one adolescent, two adult females, one adult male, seven adults, and two individuals, excavated by W. Raymond Wood and University of Missouri staff in 1963 as part of the Stockton Reservoir project. This site also contains 606 associated funerary objects, including 25 debitage, 17 projectile point/knife, one sandstone, three ochre/limonite, five misc. stone, one iron ore, seven soil samples, six seeds, one charcoal sample, 302 shell beads (including 200 Anculosa beads, three Marginella beads, 62 burnt shell beads, four disc beads), one fragmented groundstone pipe, two gorgets, one drill, two flake tools, 17 bifaces, three bone awls fragments, four worked bone objects, 14 misc. shell, one polished bone, 157 misc. faunal fragments, six clay pipes, 29 ceramic fragments, and one ceramic vessel.

23SR108, Monegaw Cave/Spy Cave, St. Clair County, Missouri. This site contains two individuals, including one adult and one child, and was found in collections in 2021 from the 1959 survey surface collection by Ralph Duerr and Mett Shippee. This site also contains 907 associated funerary objects, including 290 misc. faunal fragments (including five turtle shell fragments), 32 misc. shell, two bifaces, one wood, four unifaces, 575 debitage, and three misc. stone.

23SR111, Monte Verde Mound, St. Clair County, Missouri. This site contains one individual, collected by Carl H. Chapman and University of Missouri staff in 1960 as part of the Kaysinger Bluff Reservoir project. This site also contains 126 associated funerary objects, including 122 misc. faunal fragments, one debitage, one Rice side notched point, one hafted biface, and one drill.

23SR135, Woody Cairn, St. Clair County, Missouri. This site contains one individual, collected by Carl H. Chapman and University of Missouri staff in 1960–1962 as part of the Kaysinger Bluff Reservoir project. This site also includes 217 associated funerary objects, including 103 debitage, eight bifaces, 10 projectile points/knives, 81 sandstone, one misc. stone, one misc. shell, seven gastropods, one misc. faunal fragments, two wood, and three charcoal samples.

23SR138, Magistrate Bluff Mound, St. Clair County, Missouri. This site contains three individuals, including one adult female, one adolescent (aged 12–19.5 years), and one individual, excavated by W. Raymond Wood and University of Missouri staff in 1963 as part of the Kaysinger Bluff Reservoir project. This site also contains 223 associated funerary objects, including 112 debitage, 24 projectile points (including seven Rice side notched points, one dart chou biface, 16 Scallorn points, and two crisp ovate burls), 17 ochre, 20 bifaces, one hematite, three unifaces, two drills, one misc. shell, one worked bone object, 23 conch shell beads, 15 worked conch shell fragments, and four shell gorget fragments.

23SR141, Briley Creek, St Clair County, Missouri. This site contains one adult, collected by Carl H. Chapman and University of Missouri staff in 1965 as part of the Kaysinger Bluff Reservoir project. This site also contains 544 associated funerary objects, including one ceramic fragment, 452 debitage, one drill, two flake tools, 14 bifaces, seven projectile points, 16 misc. stone, 33 misc. faunal fragments, 17 misc. shell, and one charcoal sample.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The University of Missouri Museum of Anthropology has determined that:

- The human remains described in this notice represent the physical remains of 457 individuals of Native American ancestry.
- The 38,132 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, the University of Missouri Museum of Anthropology must determine the most

appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Missouri Museum of Anthropology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 3, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07717 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037715; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Dickinson State University, Dickinson, ND

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Dickinson State University has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 13, 2024.

ADDRESSES: Holly Gruhlke, Dickinson State University, 291 Campus Drive, Dickinson, ND 58601, telephone (701) 502–2080, email *holly.gruhlke@dickinsonstate.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Dickinson State University, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, four individuals have been reasonably identified. No associated funerary objects are present.

Human remains representing, at minimum, four individuals were presumably removed from Stark County, ND. These remains consist of the following, with the assumption of affiliation with the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, presumed to belong to four individuals, consisting of the following inventory of remains: three crania; one skull; one thoracic vertebra; three reassociated sets of postcranial remains from three individuals: Right femur, right fibula, left radius, two left ribs, one lumbar vertebra. The right femur is transected at midshaft. Left femur, left tibia, left fibula, right talus. The left femur consists of five large fragments. Right tibia, left ulna, right os coxa, two right ribs, one lumbar vertebra. The right tibia is fractured postmortem from weather and wear. The remains are in variable condition. Two crania consisting of the anterior portion of the skull are in poor condition. One cranium is complete with fracturing to delicate bones and protuberances is colored a rich, mottled brown and is light weight and friable. The skull is complete and is in good condition. The postcranial remains are in good-to-poor condition from environmental exposure and subsequent use.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location.

Determinations

Dickinson State University has determined that:

- The human remains described in this notice represent the physical remains of approximately four individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, Dickinson State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Dickinson State University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 2, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07714 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–37453; PPWOBSADC0, PPMVSCS1Y.Y00000]

Notice of Intent To Extend Concession Contract CC–GATE015–03

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service gives public notice that, pursuant to the terms of Concession Contract CC–GATE015–03 and in accordance with NPS regulations, it intends to extend Concession Contract CC–GATE015–03 until April 14, 2025, or until the effective date of a new authorization, whichever comes first.

DATES: The National Park Service intends that the extension for Concession Contract CC–GATE015–03 will be effective from April 15, 2024, until April 14, 2025.

FOR FURTHER INFORMATION CONTACT: Kurt Rausch, Program Chief, Commercial Services Program, National Park Service, 1849 C Street NW, Mail Stop 2410, Washington, DC 20240; Telephone: 202–513–7156.

SUPPLEMENTARY INFORMATION: Concession Contract CC–GATE015–03 will expire on April 14, 2024. Under 36 CFR 51.23 the National Park Service proposes to extend this contract until April 14, 2025, or until the effective date of a new authorization, whichever comes first. The National Park Service has determined that the proposed extension is necessary to avoid an interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such an interruption. The extension of the existing contract does not confer or affect any rights with respect to the award of new contracts. The publication of this notice reflects the intent of the National Park Service but does not bind the National Park Service to extend the concession contract.

Justin Unger,

Associate Director, Business Services.

[FR Doc. 2024–07674 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037739; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: The James Museum of Western and Wildlife Art, St. Petersburg, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), The James Museum of Western and Wildlife Art intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 13, 2024.

ADDRESSES: Robin Nicholson, Executive Director, The James Museum, 150 Central Avenue, St. Petersburg, FL 33701, telephone (727) 892–4200 Ext. 1013, email *Robin.Nicholson@thejamesmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of The James Museum of Western and Wildlife Art and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of six cultural items have been requested for repatriation. The six objects of cultural patrimony are Pueblo of Jemez Carvings: Carving; Jemez Artist Unknown, *Pekastsana* (Deer), Purchased by Sondra Thorson from James McLellan via eBay on 05/26/2015; Katsina or Carving; Jemez Artist Unknown, *Sehundole* (Eagle Tail) Purchased by Sondra Thorson from Adobe Gallery, Santa Fe, NM on 01/27/2015; Carving; Jemez Artist Unknown, *Jemez Cradle Doll* Purchased by Sondra Thorson from Shiprock Trading Company of Santa Fe, NM in October of 2009; Carving; Jemez Artist Unknown, *Jemez Cradle Doll* Purchased by Sondra Thorson from Michael T. Ricker on 06/21/2007; Carving; Jemez Artist Unknown, K'ats'ana'ti Doll Purchased by Sondra Thorson from Michael T. Ricker on 06/03/2007; Carving; Jemez Artist Unknown, *Jemez Cradle Doll* Purchased by Sondra Thorson via Ebay from Michael Ricker in May of 2007.

Determinations

The James Museum of Western and Wildlife Art has determined that:

- The six objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Pueblo of Jemez, New Mexico.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, The James Museum of Western and Wildlife Art must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The James Museum of Western and Wildlife Art is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: April 3, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07719 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037738; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Davis, Davis, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Davis (UC Davis) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 13, 2024.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UC Davis and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The

National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, two individuals removed from Napa County, California have been reasonably identified. There are 2,298 associated funerary objects. Of that number, 2,243 lots of funerary objects have been located and 55 lots of objects are currently missing. The 2,243 located lots of associated funerary objects include: one lot of baked clay; 1,178 lots of used flakes, flake tools, and other chipped stone; 202 lots of unworked animal bone; 67 lots of worked animal bone; one lot of ceramic beads; 34 lots of worked stone; 132 lots of debitage; two lots of historic beads; nine lots of ground stone; five lots of miscellaneous organic material (plant material, seeds, charcoal); 206 lots of worked shell; 30 lots of ochre; 143 lots of projectile points; two lots of quartz crystals; and 231 lots of unworked shell. The 55 currently missing lots of associated funerary objects include 38 lots of chipped stone, one lot of unworked bone, two lots of worked bone, two lots of debitage, three lots of worked shell, six lots of projectile points, two lots of unworked shell, and one lot of miscellaneous materials. UC Davis continues to look for the missing associated funerary objects. UC Davis conducted a field school led by Peter Schulz at CA–NAP–448 in 1977 (UC Davis Accession 150).

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

UC Davis has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 2,298 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Kletsel Dehe Wintun of the Cortina Rancheria (*previously* listed as Kletsel Dehe Band of Wintun Indians); and the Yocha Dehe Wintun Nation, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, the UC Davis must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UC Davis is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 3, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07718 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037713; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: The Children's Museum of Indianapolis, Indianapolis, IN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), The Children's Museum of Indianapolis intends to repatriate a certain cultural item that meets the definition of an unassociated funerary object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after May 13, 2024.

ADDRESSES: Jennifer Noffze, The Children's Museum of Indianapolis, 3000 N Meridian Street, Indianapolis, IN 46208, telephone (317) 334–3722, email *jenn@childrensmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of The Children's Museum of Indianapolis and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one unassociated funerary object is a worked shell. The shell was donated to the collection in 1930 by Louis S. Stockmann. The shell was originally found in a burial site located near Bird's Creek, on Chickamauga Creek, Hamilton County, Tennessee. It is culturally affiliated with The Muscogee (Creek) Nation. There is no known potentially hazardous substance used to treat this item.

Determinations

The Children's Museum of Indianapolis has determined that:

- The one unassociated funerary object described in this notice is reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary object has been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural item described in this notice and The Muscogee (Creek) Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, The Children's Museum of Indianapolis must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The Children's Museum of Indianapolis is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: April 2, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07712 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037716; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Tennessee, Department of Anthropology, Knoxville, TN, and South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK) and the South Dakota State Archaeological Research Center (ARC) have completed an inventory of human remains and associated funerary objects and have determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 13, 2024.

ADDRESSES: Dr. Ozlem Kilic, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *okilic@utk.edu* and *vpaa@utk.edu* and Dustin Lloyd, South Dakota State Archaeological Research Center, 937 East North Street, Suite 201, Rapid City, SD 57701, telephone (605) 391–2928, email *dustin.lloyd@state.sd.us.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of UTK and the ARC, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, two individuals from two distinct sites have been reasonably identified. The four associated funerary objects are one lot of two lots of faunal remains, one lot of ceramics, and one lot of lithics.

Human remains representing, at minimum, one individual were removed from site 39BK101, near Lake Campbell in Brookings County, South Dakota. These remains were exposed by animal activity in 1954 and removed from the site by a homeowner named Searles. They were taken to ''State College'' (possibly South Dakota State University), after which they were presumably transferred to the South Dakota State Archaeological Research Center (ARC). The ARC sent the remains to UTK for inventory in 1987. After the inventory project was completed, most of the remains were returned to the ARC and repatriated under South Dakota state law; however, a few bone fragments retained by UTK were found in the Department of Anthropology collections in 2021. No associated funerary objects are present at UTK; however, the ARC retained three lots of associated funerary objects. These are one lot of faunal remains, one lot of ceramics, and one lot of lithics. The associated funerary objects were not treated with any type of hazardous chemicals/substances nor treated with any type of preservation agent or chemical; however, the ceramic and lithic lots are marked with the site number and accession number.

In 1981, human remains were removed from the Hilde Gravel Pit (39LK7) in Lake County, South Dakota. The remains were found falling to the bottom of a gravel pit and reported to local law enforcement. They were removed from the site by Adrian Hannus of the Center for Western Studies at Augustana College and sent to John B. Gregg at the University of South Dakota School of Medicine for inventory. Gregg likely transferred the remains back to Hannus after analysis. Hannus probably transferred the individual to the ARC. The ARC sent the remains to the UTK Department of Anthropology for inventory in 1987. Most of the remains were returned to the ARC after completion of the inventory project and repatriated under South Dakota state law; however, bone fragments and teeth representing 1 individual were retained by UTK and were found in the Department of Anthropology collections in 2021. No associated funerary objects are present at UTK: however, the ARC retained one lot of associated funerary objects. This is one lot of faunal remains. The associated funerary objects were not treated with any type of hazardous chemicals/substances nor treated with any type of preservation agent or chemical.

These human remains and objects come from Brookings County and Lake County, SD. These counties are part of the treaty lands of the Santee Sioux (today both the Flandreau Santee Sioux Tribe of South Dakota, and the Santee Sioux Nation, Nebraska), as established in Executive Orders in 1867 and 1869. The human remains were not treated with any type of hazardous chemicals/substances, nor treated with any type of preservation agent or chemical.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The UTK and the ARC have determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The four objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of

death or later as part of the death rite or ceremony.

• There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Flandreau Santee Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, UTK and the ARC must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. UTK and the ARC are responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 2, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07715 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037736; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Missouri, Museum of Anthropology, Columbia, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Missouri Museum of Anthropology has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 13, 2024.

ADDRESSES: Candace Sall, University of Missouri Museum of Anthropology 1020 Lowry Street, Columbia, MO 65211, telephone (573) 882–9157, email *nagpra@missouri.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Missouri Museum of Anthropology, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, 36 individuals have been reasonably identified and 22,739 associated funerary objects from 15 sites (see site descriptions) In the 1950s and 1960s, American Archaeology Division at the University of Missouri completed several surveys and excavations under contract for the National Park Service, and later for the Corps of Engineers, in Cedar, Dade, Hickory, Polk and St. Clair Counties, Missouri. In 2009, the Kansas City Corps of Engineers determine the work on these sites occurred before land was purchased and control of the collection was passed to the University of Missouri Museum of Anthropology.

23CE34, no site name, Cedar County, Missouri. This site contains six individuals, including two adults, two adolescents, and two children, collected by UMC staff as part of the Stockton Reservoir Project. This site also contains 432 associated funerary objects, including eight debitage, 70 misc. stone, 326 misc. faunal fragments, one antler tool, five petrified wood, five charcoal, 14 misc. shell, three groundstones and misc. botanical surface debris.

23DA207, Toler Cave, Dade County, Missouri. This site contains one adult, excavated between 1961–64 by MU as part of the Stockton Lake Reservoir project. This site also contains 204 associated funerary objects, including 109 debitage, one biface, one projectile point, one core, 67 misc. shell, five ceramic fragments, and 20 misc. faunal fragments.

23DA235, no site name, Dade County, Missouri. This site contains a tooth from an adult, collected during a surface survey by Rolland Pangborn and University of Missouri staff in 1963 as part of the Stockton Reservoir project. This site also contains 26 associated funerary objects, including two groundstones, two hammerstones, one uniface, three hafted bifaces, and 18 other bifaces.

23DA245, Elmer Long Shelter, Dade County, Missouri. This site contains one adult, excavated by W. Raymond Wood and University of Missouri staff in 1961 as part of the Stockton Reservoir project. This site also contains four associated funerary objects, including misc. two faunal fragments and two ceramics fragments.

23HI34, no site name, Hickory County, Missouri. This site contains one adult, collected by Carl Chapman, likely in the 1950s as part of the Harry S Truman Reservoir project. No associated funerary objects are present.

23HI135, Holbert Bridge Mound, Hickory Country, Missouri. This site contains one adult, excavated by W. Raymond Wood and University of Missouri staff in 1957 as part of the Pomme de Terre Reservoir project. This site also contains 102 associated funerary objects, including 60 debitage, one core, two flake tools (including one scraper and one uniface), five bifaces, 30 projectile point/knives (including 29 Afton points), one groundstone, two misc. stone, and one soil sample.

23PO305, Colline Mound, Polk County, Missouri. This site contains one adult, excavated by W. Raymond Wood and University of Missouri staff in 1963 as part of the Stockton Reservoir project. This site also contains 185 associated funerary objects, including 143 debitage, one projectile point, three flake tools, 11 limestone, two soil samples, 13 misc. faunal fragments, and 12 bifaces.

23PO308, no name site, Polk County, Missouri. This site contains one adult, collected by W. Raymond Wood and University of Missouri staff in 1963 as part of the Stockton Lake Reservoir project. This site also contains two associated funerary objects, including one debitage and one projectile point.

23PO312, no name site, Polk County, Missouri. This site contains one adult and was recorded by Pangborn in 1964 as part of the Stockton Lake Reservoir Project. This site also contains six associated funerary objects, including six misc. faunal fragments.

23SR21, Rock House Cave, St. Clair County, Missouri. This site contains two individuals, including one child and one adult, and the site was probably excavated by Carl H. Chapman, UMC, or by MU staff, potentially as early as 1930s, although the exact circumstances and date of acquisition are unknown. This site also contains 725 associated funerary objects, including 473 misc. faunal fragments, 76 debitage, three misc. stone, 57 misc. shell, 16 bifaces, one hafted biface, one hematite, two charcoal samples, six unifaces, 89 ceramics, and one seed.

23SR103, Rock House Shelter/Broulee Shelter, St. Clair County, Missouri. This site contains two adults, and Chapman or Mett Shippee likely recovered material in the 1950s as part of surveys, although the exact circumstances and date of acquisition are unknown. This site also contains 5,334 associated funerary objects, including 199 ceramic fragments, 3,622 debitage, three drills, 20 flake tools, 100 bifaces, 39 hafted bifaces, five core, five hematite, four mano, one groundstone, two hammerstones, 76 misc. stone, 620 misc. faunal fragments, 629 misc. shell, four wood, four seeds, and one charcoal sample.

23SR117, Harrison Shelter, St. Clair County, Missouri. This site contains one adult, excavated by Carl H. Chapman and University of Missouri staff in 1962 as part of the Kaysinger Bluff project. This site also contains 13,212 associated funerary objects, including 8,140 debitage, five cores, 47 flake tools, 88 bifaces, two drills, 27 projectile points, 61 sandstones, 17 ochre, 321 misc. stone, two groundstones, 10 daub, 83 ceramic fragments, 256 misc. shell, 4,089 misc. faunal fragments, one soil sample, 22 misc. botanicals, 32 wood, one galena, and eight charcoal samples.

23SR122, Gray Shelter, St. Clair County, Missouri. This site contains three individuals, including two adult males and one adult, excavated by Carl H. Chapman and University of Missouri staff in 1961 as part of the Kaysinger Bluff Reservoir salvage project. This site also contains 2,132 associated funerary objects, including 894 misc. faunal fragments, 1,080 debitage, six misc. stone, 16 misc. shell, 29 bifaces, one hafted biface, six wood, seven uniface, three cores, one charcoal sample, 53 iron objects, 22 ceramic fragments (including Baytown plain ceramic fragments and four historic ceramics), two nuttingstones, three scrapers, and nine seeds.

23SR126, Cat Hollow Shelter, St. Clair County, Missouri. This site contains one adult, excavated by Rolland Pangborn and University of Missouri staff in 1961 as part of the Kaysinger Bluff Reservoir salvage project. This site also contains 373 associated funerary objects, including 358 misc. faunal fragments, one ceramic fragment, one charcoal sample and 13 misc. stone.

23SRUNPROV4, unprovenienced individuals and funerary objects from St. Clair County from either 23SR21 or 23SR103. This site contains 13 individuals, including two adolescents (aged 14–18, 16–24 years), eight adult males, and three adults. Survey conducted by Carl Chapman and UMC staff from 1960–1962 for the HST Reservoir (formerly Kaysinger Bluff) project. This collection was identified in review of former KCCCOE collections in 2023 and belongs to either Rock House cave (23SR21) or Rock House shelter (23SR103), per the note inside the box. This site also contains two associated funerary objects, including one misc. botanical and one misc. faunal fragments.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains and associated funerary objects described in this notice.

Determinations

The University of Missouri Museum of Anthropology has determined that:

- The human remains described in this notice represent the physical remains of 36 individuals of Native American ancestry.
- The 22,739 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and The Osage Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, the University of Missouri Museum of Anthropology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Missouri Museum of Anthropology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 3, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07716 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037714; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Rochester Museum & Science Center, Rochester, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Rochester Museum & Science Center (RMSC) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 13, 2024.

ADDRESSES: Kathryn Murano Santos, Rochester Museum & Science Center, 657 East Avenue, Rochester, NY 14607, telephone (585) 697–1929, email *kmurano@rmsc.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the RMSC, and

additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. The ancestor was removed from the California Ranch Site (Hne 22–4) in Ontario County, NY. They were excavated during an RMSC expedition on June 4, 1953. No known individual was identified.

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. The ancestor was removed from the Morrow Point Site (Hne 033; Hne 003–4) in Ontario County, NY. They were excavated during an RMSC expedition in 1956. No known individual was identified.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location or acquisition history of the human remains described in this notice.

Determinations

The RMSC has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Seneca Nation of Indians; Seneca-Cayuga Nation; and the Tonawanda Band of Seneca.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, the RMSC must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The RMSC is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 2, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07713 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037712; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Mount Holyoke College Art Museum, South Hadley, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Mount Holyoke College Art Museum intends to repatriate certain cultural items that meet the definition of sacred objects or objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after May 13, 2024.

ADDRESSES: Abigail Hoover, Associate Director of Registration and Collections, Mount Holyoke College Art Museum, Lower Lake Road, South Hadley, MA 01075, telephone (413) 538–2492, email *ahoover@mtholyoke.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Mount Holyoke College Art Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 11 cultural items have been requested for repatriation. The seven sacred objects consist of catlinite pipe bowls and pipe stems. The four objects of cultural patrimony include a pair of gauntlet gloves, a jacket, a quiver, and a bow case.

Each of the 11 cultural objects in this notice are part of the Joseph Allen Skinner Museum collection, which was donated to the Trustees of Mount Holyoke College by Skinner after his death in 1946. Like many of the objects in the Skinner collection, there is no extant provenance information and it is unclear when these objects were acquired, though pictures show the display of these objects by Skinner as early as 1934.

Catlinite pipes are pipes made of catlinite, a type of mudstone that can only be found in parts of southwest Minnesota, southeastern South Dakota, and northwest Iowa, adjacent to the site of *Pipestone National Monument.* Catlinite has been used to make ceremonial pipes important to the religious practices of Indigenous peoples of the Great Plains for over 3,000 years. These sacred pipes have been used in prayer and religious ceremonies by the Flandreau Santee Sioux Tribe and possess deep spiritual significance.

The quiver and bow case, jacket, and gauntlet gloves in the Skinner Museum collection are imbued with ongoing historical, traditional, and/or cultural importance to the Flandreau Santee Sioux Tribe. The quiver and bow case are decorated with the spiritually significant practice of quillwork, the jacket is embroidered with beadwork using culturally significant colors and designs, and the gauntlet gloves possess floral beadwork that is particularly connected to the history and geography of the Flandreau Santee Sioux Tribe.

Based on the above definitions and a general knowledge of these objects possessing both ceremonial, spiritual, and cultural significance, the claim for repatriation to the Flandreau Santee Sioux Tribe of South Dakota will be honored.

Determinations

The Mount Holyoke College Art Museum has determined that:

- The seven sacred objects described in this notice are specific ceremonial objects needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, according to the Native American traditional knowledge of a lineal descendant,

Indian Tribe, or Native Hawaiian organization.

- The four objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Flandreau Santee Sioux Tribe of South Dakota.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, the Mount Holyoke College Art Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Mount Holyoke College Art Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: April 2, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07711 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–NHAP–NPS00; PPWOCRADI0, PCU00RP14.R50000 (222); OMB Control Number 1024–0287]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Heritage Areas Program Annual Reporting 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 May 13, 2024.

ADDRESSES: Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to *http://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive (MS 244), Herndon, VA 20171 (mail); or *phadrea_ponds@nps.gov* (email). Please reference OMB Control Number 1024–0287 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth Vehmeyer, Assistant Coordinator, National Heritage Areas Program, National Park Service, 1849 C Street NW, Mail Stop 7508, Washington, DC 20240 (mail); or at *elizabeth_vehmeyer@nps.gov* (email) or (202) 354–2215 (telephone). Please reference OMB Control Number 1024–0287 in the subject line of your comments. 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 *http://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), we provide the general public and other Federal agencies with an opportunity 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.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 15, 2023 (88 FR 31005). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. 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. 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: Authorized by the Historic Sites Act of 1935, as amended (54 U.S.C. Ch. 3201), National Heritage Areas (NHAs) are places where natural, cultural, and historic resources combine to form a cohesive, nationally important

landscape. The NHA program includes 49 heritage areas and is administered by NPS coordinators in Washington, DC, and six regional offices—Anchorage, San Francisco, Denver, Omaha, Philadelphia, and Atlanta—as well as local park unit staff.

The NPS uses the following forms to monitor the progress of each heritage area on the implementation of management plans and performance goals:

- 10–320 Annual Program Report—Part I Funding Report, NPS NHA Program Office uses the information collected to allocate funds, prepare the annual NPS Budget Justification, and respond to directives from Congress.
- 10–321 Annual Program Report—Part II Progress Report, NPS NHA Program Office and regional program offices use the information collected to track each heritage area management or coordinating entity's progress on management plan implementation. The NPS uses the information in the annual program reports and publications to inform individual heritage area evaluations.

Title of Collection: National Heritage Areas Program Annual Reporting Forms.

OMB Control Number: 1024–0287.

Form Number: 10–320 and 10–321.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: NHA Coordinating Entities: Not-for-profit entities; Federal Commissions; Institutions of Higher Education; State and local governments.

Total Estimated Number of Annual Responses: 110.

Estimated Completion Time per Response: Varies; from 10 to 45 hours, depending on activity and type of form.

Total Estimated Number of Annual Burden Hours: 3,025.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

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. 2024–07699 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037711; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Center for Big Bend Studies, Sul Ross State University, Alpine, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Center for Big Bend Studies, Sul Ross State University has completed an inventory of human remains and has determined that there is a known lineal descendant connected to the human remains in this notice.

DATES: Repatriation of the human remains in this notice may occur on or after May 13, 2024.

ADDRESSES: Bryon Schroeder, Center for Big Bend Studies/Sul Ross State University, Street Address, Alpine, TX 79832, telephone (432) 837–8339, email *bryon.schroeder@sulross.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Center for Big Bend Studies, Sul Ross State University, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, five individuals have been reasonably identified. No associated funerary objects are present. These ancestral remains were recovered from the Millington Site (41PS14) in Presidio, Texas. They were salvaged in 2006 during a construction project by the city of Presidio from a backhoe trench initiated by the Presidio Sewer Line project. Geographical affiliation is consistent with the historically documented territory of the Mescalaro Apache but biological genetic data from nearby sites places the Lineal Descendants of La Junta de los Rios, in particular lineal descendant Xoxi Nayapiltzin, near the site at least 900 years ago contemporaneous with the known age of these ancestral remains. No Preservative was applied to any of the ancestral remains.

Lineal Descendant

Based on the information available and the results of consultation, a lineal descendant is connected to the human remains described in this notice.

Determinations

The Center for Big Bend Studies, Sul Ross State University has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- Xoxi Nayapiltzin is connected to the human remains described in this notice.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. The known lineal descendant connected to the human remains and associated funerary objects.
2. Any other lineal descendant not identified who shows, by a preponderance of the evidence, that the requestor is a lineal descendant.

Repatriation of the human remains in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, the Center for Big Bend Studies, Sul Ross State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Center for Big Bend Studies, Sul Ross State University is responsible for sending a copy of this notice to the lineal descendant and any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 2, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07710 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037740; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Gilcrease Museum, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Gilcrease Museum has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 13, 2024.

ADDRESSES: Laura Bryant, Gilcrease Museum, 800 S Tucker Drive, Tulsa, OK 74104, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Gilcrease Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. The two lots of associated funerary objects are faunal remains and sherds. These were removed from the Edward Marsh site in Scott County, AR, at an unknown date and came to Gilcrease Museum likely in the mid-20th century.

Based on the information available, human remains representing, at least, one individual has been reasonably identified. The 173 lots of associated funerary objects are lithic tools, pipe fragments, sherds, shell and faunal fragments, and a ceramic bead. These were removed in 1942 from a Caddo River site (Soday site #165) in Clark County, AR, by Frank Soday, an avocational archaeologist. Gilcrease Museum purchased Soday's collection in 1982.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The Gilcrease Museum has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 175 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Caddo Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 13, 2024. If competing requests for repatriation are received, the Gilcrease Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Gilcrease Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: April 3, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–07720 Filed 4–10–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR040U2000.XXXR4081G3 RX.05940908.FY19400]

Call for Nominations for the Glen Canyon Dam Adaptive Management Work Group Federal Advisory Committee

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The U.S. Department of the Interior (Interior) proposes to appoint one new member to the Glen Canyon Dam Adaptive Management Work Group (AMWG). The Secretary of the Interior (Secretary), acting as administrative lead, is soliciting nominations for qualified persons to serve as members of the AMWG.

DATES: Nominations must be postmarked by April 26, 2024.

ADDRESSES: Nominations should be sent to Mr. Daniel Picard, Deputy Regional Director, Bureau of Reclamation, 125 S State Street, Room 8100, Salt Lake City, UT 84138; or submitted via email to *borsha-ucr-gcdamp@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William Stewart, Bureau of Reclamation, telephone (385) 622–2179, email at *wstewart@usbr.gov.* Individuals 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:

Advisory Committee Scope and Objectives

The Grand Canyon Protection Act (Act) of October 30, 1992, Public Law 102–575, directs the Secretary to consult with the Governors of the Colorado River Basin States and with the general public, including members of the public with certain interests or affiliations, when preparing the requisite criteria and operating plans for Glen Canyon Dam. This group, designated the Glen Canyon Dam Adaptive Management Work Group or AMWG, provides advice and recommendations to the Secretary relative to the operation of the Glen Canyon Dam. The AMWG operates in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. ch. 10.

The duties or roles and functions of the AMWG are in an advisory capacity

only. They are to: (1) establish AMWG operating procedures, (2) advise the Secretary in meeting environmental and cultural commitments including those contained in the Record of Decision for the Glen Canyon Dam Long-Term Experimental and Management Plan Final Environmental Impact Statement and subsequent related decisions, (3) recommend resource management objectives for development and implementation of a long-term monitoring plan, and any necessary research and studies required to determine the effect of the operation of Glen Canyon Dam on the values for which Grand Canyon National Park and Glen Canyon Dam National Recreation Area were established, including but not limited to, natural and cultural resources, and visitor use, (4) review and provide input on the report identified in the Act to the Secretary, the Congress, and the Governors of the Colorado River Basin States, (5) annually review long-term monitoring data to provide advice on the status of resources and whether the Adaptive Management Program (AMP) goals and objectives are being met, and (6) review and provide input on all AMP activities undertaken to comply with applicable laws, including permitting requirements.

Membership Criteria

Prospective members of AMWG need to have a strong capacity for advising individuals in leadership positions, teamwork, project management, tracking relevant Federal government programs and policy making procedures, and networking with and representing their stakeholder group. Membership from a wide range of disciplines and professional sectors is encouraged.

Members of the AMWG are appointed by the Secretary and are comprised of:

a. The Secretary's Designee, who serves as Chairperson for the AMWG.

b. One representative each from the following entities: The Secretary of Energy (Western Area Power Administration), Arizona Game and Fish Department, Hopi Tribe, Hualapai Tribe, Navajo Nation, San Juan Southern Paiute Tribe, Southern Paiute Consortium, and the Pueblo of Zuni.

c. One representative each from the Governors from the seven basin States: Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming.

d. Representatives from the general public as follows: two from environmental organizations, two from the recreation industry, and two from contractors who purchase Federal power from Glen Canyon Powerplant.

e. One representative from each of the following Interior agencies as ex-officio non-voting members: Bureau of Reclamation, Bureau of Indian Affairs, U.S. Fish and Wildlife Service, and National Park Service.

At this time, we are particularly interested in applications from representatives of the Hualapai Native American Tribe due to a vacancy from this Tribal community on the AMWG.

After consultation, the Secretary will appoint one new member to the AMWG. The member will be selected based on the individual's qualifications, as well as the overall need to achieve a balanced representation of viewpoints, subject matter expertise, regional knowledge, and representation of communities of interest. AMWG member terms are limited to 3 years from their date of appointment. Following completion of the individual's first term, the AMWG member may request consideration for reappointment to an additional term. Reappointment is not guaranteed.

Typically, AMWG will hold two in-person meetings and one webinar meeting per fiscal year. Between meetings, AMWG members are expected to participate in committee work via conference calls and email exchanges. Members of the AMWG and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the AMWG, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by 5 U.S.C. 5703.

Nominations should include a resume that provides an adequate description of the nominee's qualifications, particularly information that will enable Interior to evaluate the nominee's potential to meet the membership requirements of the AMWG and permit Interior to contact a potential member. Please refer to the membership criteria stated in this notice.

Any interested person or entity may nominate one or more qualified individuals for membership on the AMWG. Nominations from the seven basin states, as identified in this notice, need to be submitted by the respective Governors of those states, or by a state representative formally designated by the Governor. Persons or entities submitting nomination packages on the behalf of others must confirm that the individual(s) is/are aware of their nomination. Nominations must be postmarked no later than April 26, 2024 and sent to Mr. Daniel Picard, Deputy Regional Director, U.S. Bureau of Reclamation, 125 S State Street, Room 8100, Salt Lake City, UT 84138.

Authority: 5 U.S.C. ch. 10.

Daniel Picard,

Deputy Regional Director, Alternate Designated Federal Officer, Interior Region 7: Upper Colorado Basin, Bureau of Reclamation.

[FR Doc. 2024–07682 Filed 4–10–24; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DOI–2023–0024; RR85672000, 23XR0680A2, RX.31480001.0040000]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is issuing a public notice of its intent to modify the Bureau of Reclamation (Reclamation) Privacy Act system of records, INTERIOR/WBR–7, Concessions. DOI is revising this notice to change the system bureau designation to be consistent with Reclamation's title, propose new and modified routine uses, and update all sections of the notice to accurately reflect management of the system of records. This modified system will be included in DOI's inventory of record systems.

DATES: This modified system will be effective upon publication. New or modified routine uses will be effective May 13, 2024. Submit comments on or before May 13, 2024.

ADDRESSES: You may send comments identified by docket number [DOI–2023–0024] by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov.* Include docket number [DOI–2023–0024] in the subject line of the message.
- *U.S. mail or hand-delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2023–0024]. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Regina Magno, Associate Privacy Officer, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225, *privacy@usbr.gov* or (303) 445–3326.

SUPPLEMENTARY INFORMATION:

I. Background

Reclamation maintains the INTERIOR/WBR–7, Concessions, system of records. The purpose of this system is to manage concession operation records at Reclamation facilities from the inception of requests for proposals, during execution of a contract, and through the conclusion of the contract terms. The records are used by Reclamation to identify the person or business entities applying for concession opportunities, determine their ability to manage a concession operation, and aid in ensuring compliance with the terms of the concession agreement, contract, lease, or rental agreement.

DOI is publishing this revised notice to change the system bureau designation to reflect Reclamation's title; update the system manager and system location sections; expand on categories of individuals covered by the system, the categories of records and records source categories sections; update authorities for maintenance of the system; update the storage, safeguards, and records retention schedule; update the notification, records access, and contesting procedures; reorganize the sections and provide general updates in accordance with the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular A–108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act.*

Additionally, Reclamation is changing the routine uses from a numeric to alphabetic list and is proposing to modify existing routine uses to provide clarity and transparency and reflect updates consistent with standard DOI routine uses. Routine use A was modified to further clarify disclosures to the Department of Justice or other Federal agencies when necessary, in relation to litigation or judicial proceedings. Routine use B has been modified to clarify disclosures to a congressional office to respond to or resolve an individual's request made to that office. Routine use D has been modified to allow Reclamation to refer matters to the appropriate Federal, State, local, or foreign agencies, or other public authority agencies responsible for investigating or prosecuting violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license. Routine use J was slightly modified to allow Reclamation to share information with appropriate Federal agencies or entities when reasonably necessary to prevent, minimize, or remedy the risk of harm to individuals or the Federal Government resulting from a breach in accordance with OMB Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information.*

Reclamation is proposing to add new routine uses C, E, F, G, H, I, L, M, and N to facilitate sharing of information with agencies and organizations to ensure the efficient management of all land, facilities, and waterbodies under Reclamation's jurisdiction, promote the integrity of the records in the system, or carry out a statutory responsibility of Reclamation or the Federal Government. Proposed routine use C facilitates sharing of information with the Executive Office of the President to respond to an inquiry by the individual to whom that record pertains. Proposed routine use E allows Reclamation to share information with an official of another Federal agency to assist in the performance of their official duties related to reconciling or reconstructing an individual's record. Proposed routine use F facilitates sharing of information related to hiring, issuance of a security clearance, or a license, contract, grant or benefit. Proposed routine use G allows Reclamation to share information with the National Archives and Records Administration to conduct records management inspections. Proposed routine use H allows Reclamation to share information with external entities, such as State, territorial and local governments and Tribal organizations needed in response to court orders and/or for discovery purposes related to litigation. Proposed routine use I allows Reclamation to share information with an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system. Proposed routine use L allows Reclamation to share information with OMB during the coordination and clearance process in connection with legislative affairs. Proposed routine use M allows Reclamation to share information with the Department of the Treasury to recover debts owed to the United States. Routine use N allows Reclamation to share information with the news media and the public, with approval by the Public Affairs Officer and Senior Agency Official for Privacy in consultation with counsel if there is a legitimate public interest in the disclosure of the information.

Pursuant to the Privacy Act, 5 U.S.C. 552a(b)(12), DOI may disclose information from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) to aid in the collection of outstanding debts owed to the Federal Government.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals that are maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations at 43 CFR part 2, subpart K, and following the procedures outlined in the Records Access, Contesting Record, and Notification Procedures sections of this notice.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. The INTERIOR/Reclamation-7, Concessions, system of records notice is published in its entirety below. In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to OMB and to Congress.

III. Public Participation

You should be aware your entire comment including your personally identifiable information, such as your

address, phone number, email address, or any other personal information in your comment, may be made publicly available at any time. While you may request to withhold your personally identifiable information from public review, we cannot guarantee we will be able to do so.

SYSTEM NAME AND NUMBER:

INTERIOR/Reclamation–7, Concessions.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Reclamation records in this system are maintained at:

(1) Office of Dam Safety and Infrastructure, Asset Management Division, P.O. Box 25007, MS 86–67200 (AMD), Denver, CO 80225;

(2) Columbia-Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, ID 83706;

(3) California-Great Basin Regional Office, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825;

(4) Lower Colorado Basin Regional Office, 500 Fir Street, Boulder City, NV 89005;

(5) Upper Colorado Basin Regional Office, 125 South State Street, Room 8100, Salt Lake City, UT 84138;

(6) Missouri Basin and Arkansas-Rio Grande-Texas Gulf Regional Office, 2021 4th Avenue North, Billings, MT 59101; and

(7) Area and Field offices located throughout the 17 western United States. Reclamation's Area and Field offices can be found at *www.usbr.gov.*

SYSTEM MANAGER(S):

Manager, Asset Management Division, Office of Dam Safety and Infrastructure, Bureau of Reclamation, P.O. Box 25007, MS 8667200 (AMD), Denver, CO 80225.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Reclamation Act ch. 1093, 32 Stat. 388 (June 17, 1902), as amended, codified at various sections of 43 U.S.C. Chapter 12; Federal Water Project Recreation Act of 1965, Public Law 89–72, as amended; Reclamation Development Act of 1974, Public Law 93–493, Title VI; Reclamation Recreation Management Act of 1992, Public Law 102–575, Title XXVIII; and Federal Lands Recreation Enhancement Act (REA) of 2004, Public Law 108–447, Division J, Title VIII.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to manage concession operation records from the inception of requests for proposals, during execution of a contract, and through the conclusion of the contract terms. The records are used by Reclamation to identify the person, persons, or business entities applying for concession opportunities, determine their ability to manage a concession operation, and aid in ensuring compliance with the terms of the concession agreement, contract, lease, or rental agreement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include members of the public, applicants for concession opportunities, and contracted concessionaires. Records in this system pertaining to individuals contain information concerning sole proprietorships but may also reflect personal information. In addition, the system maintains records concerning corporations and other business entities which are not subject to the Privacy Act. However, records pertaining to individuals acting on behalf of the corporations or other business entities may reflect personal information that may be maintained in this system of records.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records related to the use of Reclamation land, facilities, or waterbodies under a concession agreement, concession contract, use authorization, rental or lease agreement with individuals, corporations, or other legal business entities providing services or concessions at Reclamation projects.

These records may contain information such as applicant's name, personal email address, personal mailing address, work or personal phone number, veteran status, financial information, Social Security number, tax identification number, name of insurance carrier, financial assets to verify whether the applicants have the financial viability to manage the proposed concession operation, applicant's ability to meet program requirements as outlined in Reclamation's authorities, historical documentation related to health information from applicants for use of special concession management priority authorities, management entity name, concession operation name, and agreement or contract number.

RECORD SOURCE CATEGORIES:

Records in this system are obtained from individual members of the public, Federal and non-Federal entities including corporate and commercial concessionaires whose records are maintained, and from other internal DOI systems as set forth under Reclamation regulations and policies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOI as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

(1) DOI or any component of DOI;

(2) Any other Federal agency appearing before the Office of Hearings and Appeals;

(3) Any DOI employee or former employee acting in his or her official capacity;

(4) Any DOI employee or former employee acting in his or her individual capacity when DOI or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that DOI is likely to be affected by the proceeding.

B. To a congressional office when requesting information on behalf of, and at the request of, the individual who is the subject of the record.

C. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

D. To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, territorial, local, Tribal, or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

E. To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

F. To Federal, State, territorial, local, Tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

G. To representatives of the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

H. To State, territorial and local governments and Tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

I. To an expert, consultant, grantee, shared service provider, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

J. To appropriate agencies, entities, and persons when:

(1) DOI suspects or has confirmed that there has been a breach of the system of records;

(2) DOI has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOI (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 DOI's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

K. To another Federal agency or Federal entity, when DOI 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.

L. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

M. To the Department of the Treasury to recover debts owed to the United States.

N. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

O. To State or local government agencies for taxation purposes.

P. To non-Federal auditors under contract with DOI or Department of Energy or water user and other organizations with which Reclamation has written agreements permitting access to financial records to perform financial audits.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Concession records are managed securely at Reclamation offices. Paper records are contained in file folders stored in locked file cabinets at secured Reclamation facilities. Electronic records are contained in removable drives, computers, email, and electronic databases.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by an individual's name, management entity name, concession operation name, and contract number or agreement number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are currently maintained in accordance with the following approved NARA Reclamation Records Retention Schedule, LND–8.00 Recreation Areas, Facilities, and Services—Permanent (N1–115–94–6).

A new Department Records Schedule (DRS) has been submitted to NARA and is pending approval. Once NARA approves the Mission DRS, the records related to this system will be maintained in accordance with DRS 2.2.3.19, Sustainably Manage Land Use, Recreation and Planning—Management Plans and Reports PERM. This record schedule covers recommendations for the development of recreational areas, recreational contracts and leases, and concession contracts that includes real property. These records are permanent and are cutoff when activity is completed, closed no later than the end of the fiscal year in which completed. The files are then transferred to the Federal Record Center at 10 years or earlier if volume warrants. Legal ownership is transferred to NARA 30 years after cutoff. Paper records are disposed of by shredding or pulping, and records contained on electronic media format are degaussed or erased in accordance with the applicable records retention schedule, NARA guidelines, and Departmental policy.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.226 and other applicable security rules and policies. Records are accessible only by authorized DOI employees, and other Federal government agencies and contractors who have contractual agreements with Reclamation to conduct activities related to land and realty. During normal hours of operation, paper records are secured in locked file cabinets under the control of authorized personnel. Computers and servers on which electronic records are stored are in secured DOI and/or contractor facilities with physical, technical, and administrative levels of security such as access codes, security codes, and security guards, to prevent unauthorized access to the DOI network and information assets. Access to DOI networks and data requires a valid username and password and is limited to DOI personnel and/or contractors who have a need to know of the information for the performance of their official duties. Access to contractor's networks and data requires restricted access limited to authorized personnel.

Computerized records systems follow the National Institute of Standards and Technology privacy and security standards as developed to comply with the Privacy Act of 1974, as amended, 5 U.S.C. 552a; Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.;* Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551, *et seq.;* and the Federal Information Processing Standard 199: Standards for Security Categorization of Federal Information and Information Systems. Security controls include user identification, passwords, database permissions, encryption, firewalls, audit logs, and network system security monitoring, and software controls. System administrators and authorized personnel are trained and required to follow established internal security protocols and must complete all security, privacy, and records management training and sign the DOI Rules of Behavior.

RECORD ACCESS PROCEDURES:

An individual requesting access to their records should send a written inquiry to the System Manager identified in this notice. DOI forms and instructions for submitting a Privacy Act request may be obtained from the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records sought and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS'' on both the envelope and letter. A request for access must meet the requirements of 43 CFR 2.238.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of their records should send a written request to the System Manager as identified in this notice. DOI instructions for submitting a request for amendment of records are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must clearly identify the records for which amendment is being sought, the reasons for requesting the amendment, and the proposed amendment to the record. The request must include the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT REQUEST FOR AMENDMENT'' on both the envelope and letter. A request for amendment must meet the requirements of 43 CFR 2.246.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records about them should send a written inquiry to the System Manager as identified in this notice. DOI instructions for submitting a request for notification are available on the DOI Privacy Act Requests website at *https://www.doi.gov/privacy/privacy-act-requests.* The request must include a general description of the records and the requester's full name, current address, and sufficient identifying information such as date of birth or other information required for verification of the requester's identity. The request must be signed and dated and be either notarized or submitted under penalty of perjury in accordance with 28 U.S.C. 1746. Requests submitted by mail must be clearly marked ''PRIVACY ACT INQUIRY'' on both the envelope and letter. A request for notification must meet the requirements of 43 CFR 2.235.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

64 FR 69032 (December 9, 1999); modification published at 73 FR 20949 (April 17, 2008) and 86 FR 50156 (September 7, 2021).

Teri Barnett,

Departmental Privacy Officer, U.S. Department of the Interior.

[FR Doc. 2024–07700 Filed 4–10–24; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On April 8, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Alabama in the lawsuit entitled *United States of America, State of Alabama, and South Carolina Department of Health and Environmental Control* v. *D.R. Horton, Inc. and D.R. Horton, Inc.—Birmingham,* Civil Action No. 2:24–cv–00428–AMM.

The Complaint alleges that defendants violated the Clean Water Act's stormwater management requirements at 16 home-building construction sites. The Consent Decree resolves the claims against both defendants, who must implement specified stormwater management practices, implement a supplemental environmental project that will cost them $400,000, and pay a civil penalty of $400,000.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America, State of Alabama, et al.* v. *D.R. Horton, Inc., et al.,* and D.J. Ref. No. 90–5–1–1–11099. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the Consent Decree you may request assistance by email or by mail to the addresses provided above for submitting comments.

Scott Bauer,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–07739 Filed 4–10–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0039]

Portable Fire Extinguishers Standard (Annual Maintenance Certification Record); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Portable Fire Extinguishers Standard (Annual Maintenance Certification Record).

DATES: Comments must be submitted (postmarked, sent, or received) by June 10, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the

instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov.* Documents in the docket are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2010–0039) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce workers' risk of death or serious injury by ensuring that portable fire extinguishers are in a safe operating condition.

Paragraph (e)(3) of the Standard specifies that employers must subject each portable fire extinguisher to an annual maintenance inspection and record the date of the inspection. In addition, this provision requires employers to retain the inspection record for one year after the last entry or for the life of the shell, whichever is less, and to make the record available to OSHA on request. This recordkeeping requirement assures workers and agency compliance officers that portable fire extinguishers located in the workplace will operate normally in case of fire; in addition, this requirement provides evidence to OSHA compliance officers during an inspection that the employer performed the required maintenance checks on the portable fire extinguishers.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Portable Fire Extinguishers Standard (Annual Maintenance Certification Record). The agency is requesting an adjustment increase in burden hours from 293,496 hours to 478,393 hours, a difference of 184,897 hours. This increase is due to the increase in the number of in-service portable fire extinguishers from 39,132,742 to 63,785,650.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Portable Fire Extinguishers Standard (Annual Maintenance Certification Record).

OMB Control Number: 1218–0238.

Affected Public: Business or other for-profits.

Number of Respondents: 956,785.

Number of Responses: 956,785.

Frequency of Responses: 1.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 478,393.

Estimated Cost (Operation and Maintenance): $434,858,682.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Insert Docket No. OSHA–2010–0039). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for

assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on April 4, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–07631 Filed 4–10–24; 8:45 am]

BILLING CODE 4510–26–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–223 and CP2024–229]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 15, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–223 and CP2024–229; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 212 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alireza Motameni; *Comments Due:* April 15, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–07662 Filed 4–10–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Notice of Availability and Request for Comments; Federal Flood Standard Support website and Tool Beta Version

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of availability and request for comments.

SUMMARY: Flooding is the most common and costly natural hazard in the United States. The Office of Science and Technology Policy (OSTP) is requesting public comments on the beta version of the Federal Flood Standard Support website (available at *http://floodstandard.climate.gov*) and the Federal Flood Standard Support Tool (available at *http://floodstandard.climate.gov/tool*) to assist Federal agencies and applicants or recipients of Federal financial assistance in the implementation of the Federal Flood Risk Management Standard (FFRMS). OSTP is seeking comments on the beta version of these digital resources.

DATES: Interested persons and organizations are invited to submit comments on or before May 28, 2024.

ADDRESSES: Interested individuals and organizations should submit comments electronically via to *https://www.regulations.gov/.* Due to time constraints, mailed paper submissions will not be accepted, and electronic submissions received after the deadline may not be incorporated or taken into consideration.

Instructions: Federal eRulemaking Portal: Go to *https://www.regulations.gov/* to submit your comments electronically. Information on how to use *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ'' (*https://www.regulations.gov/faq*).

Privacy Note: OSTP's policy is to make all appropriate comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *https://www.regulations.gov/.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. OSTP requests that no proprietary information, copyrighted information, or personally identifiable information be submitted in response to this notice of availability and request for comments.

Information obtained from this Request for Comments may be used by the Government on a non-attribution

basis for planning and strategy development. OSTP will not respond to individual submissions. A response to this Request for Comments will not be viewed as a binding commitment to develop or pursue the project or ideas discussed. This Request for Comments is not accepting applications for financial assistance or financial incentives.

Responses containing references, studies, research, and other empirical data that are not widely published should include copies of or electronic links to the referenced materials. Responses from minors, or responses containing profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

Comments submitted in response to this notice are subject to the Freedom of Information Act (FOIA). Responses to this Request for Comments may be posted without change online. Please note that the United States Government will not pay for response preparation, or for the use of any information contained in a response.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct questions to Dr. Kristin Ludwig, OSTP Assistant Director for Resilience Science and Technology, at *FederalFloodStandardTool@ostp.eop.gov* or (202) 881–7711.

SUPPLEMENTARY INFORMATION:

I. Background

Flooding is the most common and costly natural hazard in the United States. From 1980–2023, flood-related losses have cost our Nation an average of $4.3 billion per year,[1] and a changing climate means that communities, homes, property, and critical infrastructure are increasingly exposed to more frequent and intense extreme events and sea level rise.[2] Understanding the risks that flooding poses to communities, national defense, and our economy is critical for Federal agencies to effectively serve the public.

Executive Order (E.O.) 13690, *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,*[3] establishes a Federal Flood Risk Management Standard (FFRMS) so that Federal agencies can take actions to enhance the Nation's resilience to current and future flooding. E.O. 13690, as reinstated by E.O. 14030, *Climate-Related Financial Risk,*[4] amended and built upon E.O. 11988, *Floodplain Management*[5] by directing Federal agencies to take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values of floodplains. Under these Executive Orders, Federal agencies are directed to conduct a review of their proposed actions—including the development of key infrastructure projects and decisions to provide Federal financial assistance. The goal of this review is to avoid long- and short-term adverse impacts associated with development in or near a floodplain. When planning a new federally funded project such as a business building or key infrastructure, Federal agencies typically follow an eight-step process as described in the *Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input.*[6]

Under E.O. 11988, floodplain areas to consider were the areas subject to flooding by the one-percent annual chance flood, also known as the base flood. These areas were typically identified by the Department of Homeland Security and the Federal Emergency Management Agency (FEMA) in their Flood Insurance Rate Maps.[7] E.O. 13690 expanded the floodplain of consideration for federally funded projects[8] to a higher elevation to address current and future flood risk due to the effects of climate change and other future conditions. E.O. 13690 also encourages climate-conscious resilient design. E.O. 13690 directs Federal agencies to select from several different approaches to establish the FFRMS floodplain. The approaches outlined in E.O. 13690 are:

- *Climate-Informed Science Approach (CISA)*—The elevation and flood hazard area that result from using the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. This approach also emphasizes whether the action is critical as one of the factors to consider when conducting the analysis.
- *Freeboard Value Approach (FVA)*—The elevation and flood hazard area that result from adding an additional two feet to the Base Flood Elevation (BFE; also known as the one-percent-annual-chance-flood or 100-year flood—a flood having a one percent chance of being equaled or exceeded in any given year) for non-critical actions and by adding an additional three feet to the BFE for critical actions.
- *0.2-Percent-Annual-Chance Flood Approach (0.2PFA)*—The area subject to flooding by the 0.2-percent-annual-chance flood or the 500-year flood—a flood having a 0.2 percent chance of being equaled or exceeded in any given year.
- The elevation and flood hazard area that result from using any other method identified in an update to the FFRMS.

Additional information, including an instructional video, on floodplains and the FFRMS is available at *https://www.fema.gov/floodplain-management/intergovernmental/federal-flood-risk-management-standard* and *https://www.hud.gov/program_offices/comm_planning/environment_energy/ffrms.*

II. Resources for Implementing the Federal Flood Risk Management Standard

A number of resources have been developed to help users learn about and implement the FFRMS. The 2023 *FFRMS Floodplain Determination Job Aid*[9] was developed to help Federal agencies charged with identifying whether a federally funded project will take place in the FFRMS floodplain. Building on the *FFRMS Floodplain Determination Job Aid,* members of the Flood Resilience Interagency Working Group[10] have developed the Federal Flood Standard Support website to help Federal agencies and their non-Federal partners implement the FFRMS. The website includes a Federal Flood Standard Support Tool to help users determine if a proposed federally

[1] NOAA National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters (2024). *https://www.ncei.noaa.gov/access/billions/,* DOI: 10.25921/stkw–7w73.

[2] USGCRP, 2023: *Fifth National Climate Assessment.* Crimmins, A.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. U.S. Global Change Research Program, Washington, DC, USA. *https://doi.org/10.7930/NCA5.2023.*

[3] 80 FR 6425, January 30, 2015.

[4] 86 FR 27967, May 20, 2021.

[5] 42 FR 26951, May 24, 1977.

[6] *See, e.g.,* 24 CFR 55.1, and *Guidelines for Implementing Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input* (Oct. 2015), *https://www.fema.gov/sites/default/files/documents/fema_implementing-guidelines-EO11988-13690_10082015.pdf.*

[7] See *https://www.fema.gov/flood-maps.*

[8] Federally funded projects are actions where Federal funds are used for new construction, substantial improvement, or to address substantial damage to structures and facilities.

[9] *https://www.fema.gov/sites/default/files/documents/fema_ffrms-floodplain-determination-job-aid.pdf.*

[10] See *https://www.fema.gov/floodplain-management/intergovernmental/white-house-flood-resilience-interagency-working-group.*

funded project will be located within an FFRMS floodplain, based on the CISA or FVA. The website also includes a number of resources that have undergone interagency review:

- a video on determining the FFRMS floodplain
- Federal Flood Standard Support Tool User Manual
- *FFRMS Interim Flood Mapping Data Development Methodology* report
- 2023 *CISA State of the Science Report*
- 2023 *FFRMS Floodplain Determination Job Aid*
- information on nature-based solutions that Federal and non-Federal partners could use in their efforts to identify practicable alternatives and minimization techniques.

Request for Comment

While OSTP invites all comments responsive to this request for comments, of key interest are: (a) feedback on the functionality of the Federal Flood Standard Support Tool in providing a user-friendly visual representation and actionable information on FFRMS approaches for federally funded projects; (b) insights on potential training and/or technical assistance needs associated with use of the Federal Flood Standard Support Tool; and (c) suggestions for clarifying the communication of the flood mapping data development methodology. Please be specific in comments provided and/or recommendations for changes to the digital resources.

Response to this Request for Comments is voluntary. Comments on the beta version of the Federal Flood Standard Support website and Tool will be considered as modifications are made to the website and Tool. Please note, as this is the beta release, over the course of the coming months, additional data will be incorporated to provide more expansive coverage.

Dated: April 8, 2024.

Stacy Murphy,

Deputy Chief Operations Officer/Security Officer.

[FR Doc. 2024–07721 Filed 4–10–24; 8:45 am]

BILLING CODE 3270–F1–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–771, OMB Control No. 3235–0752]

Proposed Collection; Comment Request; Extension: Rule 18a–9

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 18a–9 (17 CFR 240.18a–9), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 18a–9, which is modeled on Exchange Act Rule 17–13, establishes a securities count program for security-based swap dealers not dually registered as a broker-dealer or regulated by a prudential regulator (''stand-alone SBSDs''). Specifically, Rule 18a–9 requires stand-alone SBSDs to examine and count the securities they physically hold, account for the securities that are subject to their control and direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records.

Stand-alone SBSDs are required to perform a securities count each quarter, either as of a date certain or on a cyclical basis. Rule 18a–9 requires stand-alone SBSDs to note any discrepancies between the count and the firm's records, and to record in the firm's record any discrepancies that remain unresolved seven business days after the date of the examination, count, and verification.

The Commission estimates that the total hour burden under Rule 18a–6 is approximately 1,100 hours per year.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by June 10, 2024.

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.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 8, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07695 Filed 4–10–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 99915/April 8, 2024]

In the Matter of the Financial Industry Regulatory Authority, Inc.; Order Scheduling Filing of Statements On Review Regarding an Order Approving a Proposed Rule Change To Amend the FINRA Codes of Arbitration Procedure and Code of Mediation Procedure To Revise and Restate the Qualifications for Representatives in Arbitrations and Mediations (File No. SR–FINRA–2023–013)

On October 5, 2023, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the FINRA Code of Arbitration Procedure for Customer Disputes, the Code of Arbitration Procedure for Industry Disputes, and the Code of Mediation Procedure, to revise and restate the qualifications for representatives in arbitrations and mediations in the forum administered by FINRA Dispute Resolution Services. The proposed rule change was published for public comment in the **Federal Register** on October 13, 2023.[3] The public comment period closed on November 3, 2023. The Commission received comment letters related to this filing.[4] On November 9, 2023, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the

[1] *See* 15 U.S.C. 78s(b)(1).

[2] *See* 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 98703 (Oct. 6, 2023), 88 FR 71051 (Oct. 13, 2023) (File No. SR–FINRA–2023–013) (''Notice'').

[4] The comment letters are available at *https://www.sec.gov/comments/sr-finra-2023-013/srfinra2023013.htm.*

proposed rule change to January 11, 2024.[5] On January 8, 2024, FINRA responded to the comment letters received in response to the Notice.[6]

On January 11, 2024, the Division of Trading and Markets (''Division''), pursuant to delegated authority,[7] issued an order approving the proposed rule change.[8] On January 19, 2024, the Deputy Secretary of the Commission notified FINRA that, pursuant to Commission Rule of Practice 431,[9] the Commission would review the Division's action pursuant to delegated authority and that the Division's action pursuant to delegated authority was stayed until the Commission orders otherwise.[10]

Accordingly, *it is ordered,* pursuant to Commission Rule of Practice 431, that on or before May 8, 2024, any party or other person may file a statement in support of, or in opposition to, the action made pursuant to delegated authority.

It is further *ordered* that the order approving proposed rule change SR–FINRA–2023–013 shall remain stayed pending further order of the Commission.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07672 Filed 4–10–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99913; File No. SR–BX–2024–012]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7, Section 2(1)

April 5, 2024.

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 1, 2024, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Options 7, Section 2(1).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Pricing Schedule at Options 7, Section 2(1) to establish a number of incentives for Lead Market Makers (''LMMs''),[3] Market Makers (''MMs''),[4] and Customers.[5]

Today, the Exchange assesses the following fees and rebates in Penny and Non-Penny Symbols:

PENNY SYMBOLS

Market participant	Maker rebate	Taker fee
Lead Market Maker	($0.24)	$0.50
Market Maker	(0.20)	0.50
Non-Customer	(0.12)	0.50
Firm	(0.12)	0.50
Customer	(0.30)	0.40

NON-PENNY SYMBOLS

Market participant	Maker rebate/ fee	Taker fee
Lead Market Maker	($0.45)	$1.25
Market Maker	(0.40)	1.25
Non-Customer	0.45	1.25
Firm	0.45	1.25

[5] *See* letter from Kristine Vo, Assistant General Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel, Division of Trading and Markets, Commission, dated Nov. 9, 2023, *https://www.finra.org/sites/default/files/2023-11/SR-FINRA-2023-013-ExtensionNo1.pdf.*

[6] *See* letter from Kristine Vo, Assistant General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated January 8, 2024, *https://www.sec.gov/comments/sr-finra-2023-013/srfinra2023013-366519-893662.pdf.*

[7] *See* 17 CFR 200.30–3(a)(12).

[8] *See* Exchange Act Release No. 99335 (Jan. 11, 2024), 89 FR 3481 (Jan. 18, 2024).

[9] *See* 17 CFR 201.431.

[10] *See* letter from J. Matthew DeLesDernier, Deputy Secretary, Commission, to Kristine Vo, Assistant General Counsel, FINRA, dated Jan. 19, 2024, *https://www.sec.gov/files/rules/sro/finra/2024/34-99335-letter.pdf.*

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] The term ''Lead Market Maker'' or (''LMM'') applies to a registered BX Options Market Maker that is approved pursuant to Options 2, Section 3 to be the LMM in an options class (options classes).

[4] The term ''BX Options Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on BX Options pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security.

[5] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(a)(48)).

NON-PENNY SYMBOLS—Continued

Market participant	Maker rebate/ fee	Taker fee
Customer	(1.10)	0.79

Note 2 Incentive

The Exchange now proposes to establish new incentives in note 2, which is currently reserved, that would be in addition to the Penny and Non-Penny Symbol Maker Rebates currently provided to LMMs and MMs. Specifically, note 2 would provide:

Lead Market Makers and Market Makers that either (1) execute more than 0.45% Customer Total Consolidated Volume (''TCV'') per day which adds liquidity in a given month (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY), or (2) increase their combined Lead Market Maker and Market Maker volume which adds liquidity in a given month by at least 70% above their March 2024 volume as measured by a percentage of TCV (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY), will receive the following incentives: (i) an additional $0.05 per contract Maker Rebate in Penny Symbols excluding SPY, (ii) an additional $0.01 per contract Maker Rebate in SPY, and (iii) an additional $0.24 per contract Maker Rebate in Non-Penny Symbols. Lead Market Makers and Market Makers with no volume in the add liquidity segment for the month of March 2024 may qualify for the additional Maker Rebates by having any new volume (excluding SPY volume) considered as added volume. This note 2 incentive will be available through September 30, 2024.

Proposed note 2 would provide LMMs and MMs two separate paths to receive the additional Maker Rebates described above. The first path would be based on liquidity adding volume on BX as a percentage of Customer Total Consolidated Volume, which will be defined as the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.[6] The Exchange is proposing to base the first path on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume.

The second path would be a growth incentive aimed at rewarding LMMs and MMs to grow the extent of their liquidity adding activity on the Exchange over time, relative to a benchmark month. LMMs and MMs who did not have any combined Lead Market Maker and Market Maker add liquidity volume for the month of March 2024 (and therefore lack March 2024 baseline volume against which to measure subsequent growth) would meet the proposed growth requirement through whatever volume of LMM and MM add liquidity activity (excluding in SPY) during the first month of use.[7] Growth incentives in general are designed to further encourage Members to increase their order flow to the Exchange, which contributes to a deeper, more liquid market and provides even more execution opportunities for market participants. Increased overall order flow benefits all market participants by contributing towards a robust and well-balanced market ecosystem. Other options exchanges have adopted substantially similar growth incentives.[8]

The Exchange notes that it will exclude LMM and MM liquidity adding volume in SPY from both paths because SPY is the most actively traded symbol on BX, and Exchange believes that LMMs and MMs will continue to be incentivized to bring SPY liquidity adding volume on BX despite the exclusion of SPY volume from the note 2 qualifications. Further, the Exchange is encouraging SPY liquidity adding volume separately through the proposed additional $0.01 per contract Maker Rebate in SPY described above.

The proposed note 2 incentives will be available through September 30, 2024. The Exchange believes that this would ensure that the note 2 incentives—notably the growth incentive using the benchmark month (*i.e.,* March 2024) against which LMM and MM growth would be measured—are timely and meet the intended purpose of encouraging increased order flow and liquidity adding activity.

Note 4 Incentive

The Exchange also proposes to establish a growth incentive in new note 4 of Options 7, Section 2(1) that would have similar qualifications as the growth incentive proposed in new note 2 above in that Members would be measured relative to a benchmark month. Specifically, Members that increase their executed Customer volume which removes liquidity in a given month by at least 70% above their March 2024 volume as measured by a percentage of TCV will receive a Taker Fee discount of $0.05 per contract in Penny Symbols excluding SPY, QQQ, and IWM. Accordingly, qualifying Members would pay a Customer Taker Fee of $0.35 (instead of $0.40) per contract in Penny Symbols. The Exchange is proposing to exclude SPY, QQQ, and IWM from the note 4 incentive because Members are already paying lower Customer Taker Fees of $0.33 per contract for those symbols today.[9]

The proposed note 4 incentive is aimed at rewarding Members to grow the extent of their Customer liquidity removing activity on the Exchange over time, relative to a benchmark month. The Exchange also proposes to make clear that Members with no Customer volume in the remove liquidity segment for the month of March 2024 may qualify for the Taker Fee discount by having any new volume considered as added volume. Similar to the note 2 incentive proposed above, Members who did not have the requisite volume for the month of March 2024 (and therefore lack March 2024 baseline volume against which to measure subsequent growth) would meet the proposed growth requirement through whatever volume in the required segment during the first month of use. The Exchange believes that the proposed growth incentive in note 4 will encourage increased Customer order flow to the Exchange, which contributes to a deeper, more liquid market and provides even more

[6] The Exchange will add this definition in Options 7, Section 1(a). The Exchange notes the proposed language is based on substantially similar definitions in the Pricing Schedules of its affiliates Nasdaq ISE (''ISE'') and Nasdaq MRX (''MRX''). *See* ISE Options 7, Section 1(c) and MRX Options 7, Section 1(c).

[7] As discussed below, the Exchange will sunset the note 2 incentives (including the growth incentive) on September 30, 2024 and will use this time period to evaluate the proposed growth incentive criteria to determine whether the parameters are appropriately designed to incentivize LMMs and MMs in the intended manner.

[8] *See, e.g.,* Securities Exchange Act Release Nos. 97148 (March 15, 2023), 88 FR 17068 (March 21, 2023) (SR–MRX–2023–07) (establishing growth incentive for MRX Market Makers); and 97440 (May 5, 2023), 88 FR 30370 (May 11, 2023) (SR–MRX–2023–08) (adding an expiration date for the MRX growth incentive). MRX subsequently eliminated this growth incentive upon reaching the expiration date. *See* Securities Exchange Act Release No. 97800 (June 26, 2023), 88 FR 42409 (June 30, 2023) (SR–MRX–2023–11).

[9] *See* Options 7, Section 2(1), note 1.

execution opportunities for market participants.

Similar to the proposed note 2 incentive above, the Exchange proposes to sunset the new note 4 incentive on September 30, 2024. The Exchange believes that this would ensure that the proposed growth incentive is timely and meets the intended purpose of encouraging increased order flow and Customer liquidity removing activity.

Technical Amendments

Lastly, the Exchange proposes a number of non-substantive, technical edits in Options 7. First, the Exchange proposes to title paragraph (a) in Options 7, Section 1 as ''Definitions'' to more clearly identify the applicable rules within this paragraph. Second, the Exchange proposes to amend Options 7, Section 2(1) to correct a formatting error by adding parentheses around the note 1 and note 3 references appended to the Customer Taker Fee in Penny Symbols and Customer Maker Rebate in Non-Penny Symbols, respectively.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [12]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of seventeen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

Note 2 Incentive

The Exchange believes that the proposed note 2 incentives are reasonable for several reasons. As discussed above, note 2 would provide LMMs and MMs two separate paths to receive the proposed additional Maker Rebates of (i) $0.05 per contract in Penny Symbols excluding SPY,[14] (ii) $0.01 per contract in SPY,[15] and (iii) $0.24 per contract in Non-Penny Symbols.[16] The first path would be based on liquidity adding volume on BX as a percentage of Customer Total Consolidated Volume (*i.e.,* TCV).[17] The Exchange believes that the total industry percentage threshold is reasonable in order to align with increasing LMM and MM activity on BX over time. The Exchange is proposing to base the first path on a percentage of industry volume in recognition of the fact that the volume executed by a Member may rise or fall with industry volume. A percentage of industry volume calculation allows the proposed qualifications in note 2 to be calibrated to current market volumes rather than requiring a static amount of volume regardless of market conditions. The proposed threshold of 0.45% Customer Total Consolidated Volume is generally intended to reward LMMs and MMs for executing more liquidity adding volume on BX. To the extent such activity is increased by this proposal, market participants may increasingly compete for the opportunity to trade on Exchange to the benefit of all market participants. As noted above, total industry percentage thresholds are established concepts within the Pricing Schedules of BX's affiliates.[18]

As discussed above, the second path would be a growth incentive that would provide LMMs and MMs with the additional Maker Rebates outlined above if they increase their combined LMM and MM volume which adds liquidity in a given month by at least 70% above their March 2024 volume as measured by a percentage of TCV (excluding LMM and MM volume which adds liquidity in SPY). The Exchange believes that its proposal is reasonable because it will provide extra incentives to LMMs and MMs to engage in substantial amounts of liquidity adding activity on the Exchange, as well as to substantially grow the extent to which they do so relative to a recent benchmark month. The Exchange believes that if the proposed growth incentive is effective, any ensuing increase in liquidity adding activity on BX will improve the quality of the market overall, to the benefit of all market participants. The Exchange also believes that it is reasonable to consider any new add liquidity volume (excluding SPY volume) for LMMs and MMs with no such volume for the month of March 2024 in order for those market participants to receive the proposed additional Maker Rebates in note 2. The proposed growth incentive is designed to attract additional liquidity from new LMMs and MMs as well as existing LMMs and MMs who

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[13] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[14] Accordingly, qualifying LMMs and MMs would receive a total of $0.29 per contract (LMMs) and $0.25 per contract (MMs) in Penny Symbols excluding SPY.

[15] Accordingly, qualifying LMMs and MMs would receive a total of $0.25 per contract (LMMs) and $0.21 per contract (MMs) in SPY.

[16] Accordingly, qualifying LMMs and MMs would receive a total of $0.69 per contract (LMMs) and $0.64 per contract (MMs) in Non-Penny Symbols.

[17] In particular, LMMs and MMs that execute more than 0.45% Customer Total Consolidated Volume (''TCV'') per day which adds liquidity in a given month (excluding Lead Market Maker and Market Maker volume which adds liquidity in SPY) would receive the proposed note 2 incentives.

[18] *See supra* note 6.

may not have a large footprint on BX today. To the extent this proposal attracts such LMM and MM add liquidity volume to BX, all market participants should benefit through more trading opportunities and tighter spreads. An overall increase in activity would deepen the Exchange's liquidity pool, support the quality of price discovery, promote market transparency and improve market quality for all investors. As discussed above, the Exchange intends for the proposed note 2 incentives, including the growth incentive, to sunset on September 30, 2024, and will use this time to evaluate suitable parameters for such market participants in the targeted segment. The Exchange believes that this will ensure that the proposed incentives are timely and meet the intended purpose of encouraging increased order flow and liquidity adding activity. As noted above, other options exchanges (including the Exchange's affiliate) have previously adopted substantially similar growth incentives.[19]

The Exchange further believes that it is reasonable to exclude LMM and MM liquidity adding volume in SPY from both paths because SPY is the most actively traded symbol on BX, and Exchange believes that LMMs and MMs will continue to be incentivized to bring SPY liquidity adding volume on BX despite the exclusion of SPY volume from the note 2 qualifications. Further, the Exchange is encouraging SPY liquidity adding volume separately through the proposed additional $0.01 per contract Maker Rebate in SPY described above.

The Exchange believes that the proposed note 2 incentives are equitable and not unfairly discriminatory for the reasons that follow. As a general matter, the Exchange believes that it is equitable and not unfairly discriminatory to provide the note 2 incentives to only LMMs and MMs because these market participants have different requirements and additional obligations to the Exchange that other market participants do not (such as quoting requirements). As noted above, LMMs would ultimately receive higher Maker Rebates than MMs when combining the current base rebates with the proposed additional rebates.[20] Nevertheless, the Exchange continues to believe that it is equitable and not unfairly discriminatory to provide more favorable pricing to LMMs compared to MMs given that LMMs are subject to heightened quoting obligations compared to Market Makers.[21] The higher rebates therefore recognize the differing contributions made to the liquidity and trading environment on the Exchange by LMMs. Overall, the Exchange believes that incentivizing both LMMs and MMs to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange also believes that it is equitable and not unfairly discriminatory to consider any new add liquidity volume (excluding SPY volume) for LMMs and MMs with no such volume in March 2024 in order for those market participants to receive the proposed additional Maker Rebates because this is designed to attract additional liquidity and order flow from new and existing LMMs and MMs to the Exchange, as discussed above. In turn, this additional liquidity should benefit all market participants through increased liquidity and order interaction. Furthermore, the proposed growth incentive will be temporary and sunset on September 30, 2024 to ensure that the incentive is timely and meets the intended purpose of encouraging increased order flow and liquidity adding activity.

Note 4 Incentive

The Exchange believes that the proposed growth incentive in new note 4 of Options 7, Section 2(1) is reasonable for the reasons that follow. As discussed above, Members that increase their executed Customer volume which removes liquidity in a given month by at least 70% above their March 2024 volume as measured by a percentage of TCV will receive a Taker Fee discount of $0.05 per contract in Penny Symbols excluding SPY, QQQ, and IWM. Accordingly, qualifying Members would pay a Customer Taker Fee of $0.35 (instead of $0.40) per contract in Penny Symbols excluding SPY, QQQ, and IWM. The Exchange believes it is reasonable to exclude SPY, QQQ, and IWM from the note 4 incentive because Members are already paying lower Customer Taker Fees of $0.33 per contract for those symbols today.[22]

The Exchange believes that the proposed growth incentive is reasonable because it will provide extra incentives to Members to engage in substantial amounts of Customer liquidity removing activity on the Exchange, as well as to substantially grow the extent to which they do so relative to a recent benchmark month. The Exchange believes that if the proposed growth incentive is effective, any ensuing increase in liquidity removing activity on BX will increase trading opportunities for all market participants. The Exchange also believes that it is reasonable to consider any new Customer remove liquidity volume for Members with no such volume for the month of March 2024 in order for those Members to receive the proposed Taker Fee discount in note 4. The proposed growth incentive is designed to attract additional Customer order flow from new Members as well as existing Members who may not have a large footprint on BX today. To the extent this proposal attracts such order flow to BX, all market participants should benefit through more trading opportunities. As discussed above, the Exchange intends for the proposed growth incentive in note 4 to sunset on September 30, 2024, and will use this time to evaluate suitable parameters for such market participants in the targeted segment. The Exchange believes that this will ensure that the proposed incentive is timely and meets the intended purpose of encouraging increased order flow and Customer liquidity removing activity. As noted above, other options exchanges (including the Exchange's affiliate) have previously adopted similar growth incentives.[23]

Further, the Exchange believes that the proposed note 4 incentive is equitable and not unfairly discriminatory for the reasons that follow. As a general matter, the Exchange believes that it is equitable and not unfairly discriminatory to provide the note 4 incentive to only Customer orders because the proposed changes are intended to increase Customer order follow, particularly Customer remove liquidity order flow, to BX. An increase in Customer order flow enhances liquidity on the Exchange to the benefit of all market participants by providing more trading opportunities, which in turn attracts other market participants that may interact with this order flow.

The Exchange also believes that it is equitable and not unfairly discriminatory to consider any new Customer remove liquidity volume for Members with no such volume in March 2024 in order for those Members to receive the proposed Taker Fee discount because this is designed to attract additional liquidity and order flow from new and existing Members to the Exchange, as discussed above. In turn, this additional liquidity should benefit

[19] *See supra* note 8.

[20] *See supra* notes 14–16.

[21] *See* Options 2, Section 4(j) (setting forth the 90% or higher quoting obligations for LMMs) and Section 5(d) (setting forth the 60% or higher quoting obligations for MMs).

[22] *See* Options 7, Section 2(1), note 1.

[23] *See supra* note 8.

all market participants through increased liquidity and order interaction. Furthermore, the proposed growth incentive will be temporary and sunset on September 30, 2024 to ensure that the incentive is timely and meets the intended purpose of encouraging increased Customer order flow and liquidity removing activity.

Technical Amendments

The Exchange believes that the non-substantive, technical edits in Options 7 are consistent with the Act because they will promote clarity so that market participants can more easily locate the relevant rules in the Pricing Schedule, and they are also intended to correct formatting errors in the Pricing Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, the Exchange does not believe that its proposal will place any category of market participant at a competitive disadvantage. As it relates to the proposed note 2 incentives offered to LMMs and MMs, the Exchange believes that the additional Maker Rebates should encourage the provision of liquidity from both existing and new LMMs and MMs that enhances the quality of the Exchange's market and increases the number of trading opportunities on the Exchange for all market participants who will be able to compete for such opportunities. Similarly, for the proposed note 4 incentive offered to Customers, the Exchange likewise believes that the Taker Fee discount should encourage additional Customer order flow from both existing and new Members, which would enhance BX's market quality and increase trading opportunities to the benefit of all market participants.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other options exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[24]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–BX–2024–012 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–BX–2024–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2024–012 and should be submitted on or before May 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07641 Filed 4–10–24; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–321, OMB Control No. 3235–0358]

Submission for OMB Review; Comment Request; Extension: Rule 11a–3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously

approved collection of information discussed below.

Section 11(a) of the Investment Company Act of 1940 (''Act'') (15 U.S.C. 80a-11(a)) provides that it is unlawful for a registered open-end investment company (''fund'') or its underwriter to make an offer to the fund's shareholders or the shareholders of any other fund to exchange the fund's securities for securities of the same or another fund on any basis other than the relative net asset values (''NAVs'') of the respective securities to be exchanged, ''unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers.'' Section 11(a) was designed to prevent ''switching,'' the practice of inducing shareholders of one fund to exchange their shares for the shares of another fund for the purpose of exacting additional sales charges.

Rule 11a–3 (17 CFR 270.11a–3) under the Act of 1940 is an exemptive rule that permits open-end investment companies (''funds''), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

The staff estimates that there are approximately 1,379 active open-end investment companies registered with the Commission as of December 2022 (using filings made through July 2023). The staff estimates that 25 percent of these funds (345 funds) impose a non-nominal administrative fee on exchange transactions. The staff estimates that the recordkeeping requirement of the rule requires approximately 1 hour annually of clerical time (at an estimated $73 per hour) [1] per fund, for a total of 345 hours for all funds (at a total annual cost of $25,185).[2]

The staff estimates that 5 percent of these 1,379 funds (or 69 funds) terminate an exchange offer or make a material change to the terms of their exchange offer each year, requiring the fund to comply with the notice requirement of the rule. The staff estimates that complying with the notice requirement of the rule requires approximately 1 hour of attorney time (at an estimated $484 per hour) and 2 hours of clerical time (at an estimated $73 per hour) per fund, for a total of approximately 207 hours for all funds to comply with the notice requirement (at a total annual cost of $43,470).[3] The staff estimates that such notices will be enclosed with other written materials sent to shareholders, such as annual shareholder reports or account statements, and therefore any burdens associated with mailing required notices are accounted for in the burdens associated with Form N–1A registration statements for funds.

The recordkeeping and notice requirements together impose an estimated total burden of 552 hours on all funds (at a total annual cost of $68,655).[4] The total number of respondents is 414, each responding once a year.[5] The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

Table 1 below summarizes the currently approved and updated burdens associated with rule 11a–3.

TABLE 1—SUMMARY OF BURDEN ESTIMATES FOR RULE 11a–3

	Internal burden	Wage rate	Cost of internal burden
CURRENTLY-APPROVED BURDEN ESTIMATES			
Recordkeeping Requirement	1 hour	$63/hr. (clerk)	$63.
Respondents	349 funds.		349 funds.
Total	349 hours		$21,987.
Notice Requirement	1 hour	$419/hr. (attorney)	$419.
	2 hours	$63/hr. (clerk)	$126.
Respondents	70 funds		70 funds.
Total	210 hours		$38,150.
Total Responses (Recordkeeping + Notice)	419.		
Total Burden (Recordkeeping + Notice)	559 hours		$60,137.

[1] This estimate of $73 per hour for clerical work and the other estimated wage rates below are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013; the estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and adjusted to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

[2] This estimate is based on the following calculations: (1,379 funds × 25% = 345 funds); (345 × 1 (clerical hour) = 345 clerical hours); (345 × $73 = $25,185 total annual cost for recordkeeping requirement).

[3] This estimate is based on the following calculations: 1,379 funds × 5% = 69 funds; 69 × ((1 attorney hour × $484 per hour) + (2 clerical hours × $73 per hour)) = $43,470 total annual cost.

[4] This estimate is based on the following calculations: (207 (notice hours) + 345 (recordkeeping hours) = 552 total hours); ($43,470 (notice costs) + $25,185 (recordkeeping costs) = $68,655 total annual costs).

[5] This estimate is based on the following calculation: (345 funds responding to recordkeeping requirement + 69 funds responding to notice requirement = 414 total respondents).

TABLE 1—SUMMARY OF BURDEN ESTIMATES FOR RULE 11a–3—Continued

	Internal burden	Wage rate	Cost of internal burden
UPDATED BURDEN ESTIMATES			
Recordkeeping Requirement	1 hour	$73/hr. (clerk)	$73.
Respondents	345 funds		345 funds.
Total	345 funds		$25,185.
Notice Requirement	1 hour	$484/hr. (attorney)	$484.
	2 hours	$73/hr. (clerk)	$146.
Respondents	69 funds		69 funds.
Total	207 hours		$43,470.
Total Responses (Recordkeeping + Notice)	414.		
Total Burden (Recordkeeping + Notice)	552 hours		$68,655.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: *www.reginfo.gov.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by May 13, 2024 to (i) *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov*.

Dated: April 8, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07664 Filed 4–10–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34–99910; File No. SR–CboeEDGX–2023–083]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Make Permanent Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options

April 5, 2024.

On December 26, 2023, Cboe EDGX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the operation of its programs that allow the Exchange to list options on the Mini-SPX Index with P.M.-settlement and to list broad-based index options with nonstandard expirations. The proposed rule change was published for comment in the **Federal Register** on January 16, 2024.[3] On February 28, 2024, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On April 1, 2024, the Exchange withdrew the proposed rule change (CboeEDGX–2023–083).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07639 Filed 4–10–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99909; File No. SR–CboeBZX–2023–107]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Make Permanent Pilot Programs in Connection With the Listing and Trading of P.M.-Settled Series on Certain Broad-Based Index Options

April 5, 2024.

On December 26, 2023, Cboe BZX Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent the operation of its programs that allow the Exchange to list options on the Mini-SPX Index with P.M.-settlement and to list broad-based index options with nonstandard expirations. The proposed rule change was published for comment in the **Federal Register** on January 16, 2024.[3] On February 28, 2024, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99300 (January 9, 2024), 89 FR 2695.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 99621, 89 FR 15906 (March 5, 2024). The Commission designated April 15, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99299 (January 9, 2024), 89 FR 2688.

[4] 15 U.S.C. 78s(b)(2).

within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On April 1, 2024, the Exchange withdrew the proposed rule change (CboeBZX–2023–107).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07638 Filed 4–10–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99911; File No. SR–DTC–2024–004]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Deposits Service Guide and the Operational Arrangements

April 5, 2024.

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 2, 2024, The Depository Trust Company (''DTC'') 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 primarily prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the Deposits Guide and the Operational Arrangements to reflect the upcoming migration of the Deposit/Withdrawal at Custodian (''DWAC'') functionality for securities in the DTC Fast Automated Securities Transfer (''FAST'') program (''FAST-eligible Securities'')[5] from PTS/PBS[6] to the new DTC Securities Processing Application (''SPA'') system. In addition, DTC is proposing to amend the Deposits Guide to make technical and ministerial changes, as described in greater detail below.[7]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the Deposits Guide and the Operational Arrangements to reflect the upcoming migration of the Deposit/Withdrawal at Custodian (''DWAC'') functionality for securities in the DTC Fast Automated Securities Transfer (''FAST'') program (''FAST-eligible Securities'')[8] from PTS/PBS[9] to the new DTC Securities Processing Application (''SPA'') system. In addition, DTC is proposing to amend the Deposits Guide to make technical and ministerial changes, as more fully described below.

(i) Background

Securities Processing Modernization Program

DTC has undertaken a multiyear and multiphase initiative to enhance and modernize its securities processing systems. DTC's current security processing system (''SPS'') applications utilize legacy mainframe, terminal-based, centralized computing technology, which Participants and FAST Agents typically access through PTS/PBS. The SPS applications are, and have been for decades, robust and reliable. However, because the SPS is comprised of various distinct mainframe legacy applications, enhancements and maintenance of such are becoming more difficult and more costly. Accordingly, as part of its overall modernization efforts, DTC determined to create a more effective and efficient securities processing model with greater flexibility for new products, maintenance and future enhancements—the SPA system.

With this proposed rule change, DTC would migrate the DWAC functionality currently used by Participants and FAST Agents through PTS/PBS to the SPA system, without any cost or investment needed by Participants or FAST Agents. SPA is built on distributed server-based computing and is designed to provide a system that is streamlined, resilient and in line with the needs and usability standards of Participants and FAST Agents.

About FAST and DWAC

The FAST program reduces and streamlines certificate movements between DTC and transfer agents. For FAST-eligible Securities, the FAST Agent, as custodian for DTC, hold the securities registered in the name of DTC's nominee, Cede & Co., in the form of global balance certificates (''FAST Balance Certificate''). Each FAST Balance Certificate represents the amount (*e.g.,* shares, units, obligations) of a specific security registered to Cede & Co., as nominee of DTC, on the books of the FAST Agent (*i.e.,* the ''DTC FAST Balance'' of the security).

A FAST Agent may custody the FAST Balance Certificates in the form of a certificate that either (i) evidences a fixed number of shares, units, or obligations and is cancelled and reissued daily, or (ii) reflects that the amount of the DTC FAST Balance shown on the books of the issuer is represented by such certificate, and the certificate is not cancelled as that number of share, units, or obligations fluctuates. FAST Agents are required to confirm daily to DTC the numbers of share, units or obligations, as the case

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[5] *See* Securities Exchange Act Release No. 99623, 89 FR 15906 (March 5, 2024). The Commission designated April 15, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] A FAST-eligible Security is a DTC-eligible Security that has a transfer agent that is an approved FAST transfer agent.

[6] PTS (Participant Terminal System) and PBS (Participant Browser System) are user interfaces for DTC settlement and asset services functions. PTS is mainframe-based, and PBS is web-based with a mainframe back-end. Participants may use either PTS or PBS, as they are functionally equivalent.

[7] Each term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (''Rules''), the Deposits Service Guide (''Deposits Guide''), the Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (''Operational Arrangements''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[8] A FAST-eligible Security is a DTC-eligible Security that has a transfer agent that is an approved FAST transfer agent.

[9] PTS (Participant Terminal System) and PBS (Participant Browser System) are user interfaces for DTC settlement and asset services functions. PTS is mainframe-based, and PBS is web-based with a mainframe back-end. Participants may use either PTS or PBS, as they are functionally equivalent.

may be, reflected on each FAST Balance Certificate and registered in the same [sic] of Cede & Co.

A Participant can deposit a physical certificate for a FAST-eligible Security with DTC directly, and DTC will credit the Participant's account by the amount of the deposit, and send the certificate received from the Participant to the FAST Agent. The FAST Agent will cancel the certificate and increase the DTC FAST Balance for the security by the amount being deposited.[10]

The deposit functionality of DWAC permits a Participant to make a deposit of a FAST-eligible Security directly with the FAST Agent for the security, which will then cancel the certificate (if a physical deposit) and increase the DTC FAST Balance for the security by the amount being deposited. The FAST Agent will confirm the deposit to DTC, which will credit the Participant's account with the amount of the deposit. Similarly, a Participant can make a DWAC withdrawal, in which the FAST Agent will reduce the DTC FAST Balance for the amount of the security being withdrawn and will re-register the amount of the security being withdrawn into the name of the Participant or to another party identified by the Participant.[11]

(ii) Proposed Rule Change

DWAC Functionality

FAST Agents currently use the Custodian Deposit/Withdrawal at Custodian (''CDWC'') function on PTS (or the TA Direct Deposit/Withdrawal function on PBS), to view and approve the DWAC transactions of Participants. In addition, FAST Agents can also use the optional DWAC Centralized Billing through PTS/PBS to automate the billing and collection of pass-through DWAC fees charged to Participants by the FAST Agent. Participants currently use the Participant Deposit/Withdrawal at Custodian (''PDWC'') function on PTS (or the Part Direct Deposit/Withdrawal functions on PBS) to view and to input deposit and withdrawal instructions for their DWAC transactions.

Pursuant to the proposed rule change, the DWAC functionality currently used by Participants and FAST Agents through PTS/PBS will migrate to the SPA system. As of March 28, 2024, FAST Agents and Participants will be required to conduct these activities through the SPA system, which is accessible through the DTCC Portal at *MyDTCC.com.* In addition, pursuant to the proposed rule change, APIs for the SPA system would be available in connection with DWAC.

Deposits Guide and Operational Arrangements Amendments

To effectuate the proposed rule change, DTC would make the following changes to the Deposits Guide and the Operational Arrangements:

(a) The Deposits Guide

(i) In the ''Depositing Securities at DTC'' section:

(1) Add a reference to the Securities Processing Application (SPA) system and, in the list of methods for deposit, replace ''The Fast Automated Securities Transfer system (FAST) (via the PTS function PDWC and PBS function Participant Direct Deposit Withdrawal)'' with ''The SPA System (via Application Programming Interface (API) or via the DTCC Portal) to inquire, create and review transactions;'' and

(2) Clarify that a Participant receives same-day credit for its DWAC deposit, as long as the DWAC deposit is ''entered by the Participant and created via SPA and approved by the custodian/agent'' prior to noon Eastern Time.[12]

(ii) In the ''Deposit/Withdrawal at Custodian (DWAC)'' section:

(1) In the ''About the Product'' subsection, add the following at the end of the paragraph, ''DWAC is available on the Securities Processing Application (SPA) system via the DTCC Portal or Application Programming Interface (API).''

(2) In the ''How the Product Works'' subsection:

(a) Replace references to DWACs being performed through PTS/PBS with references to the SPA system, and add language to reflect that when a Participant requests a DWAC, a unique Transaction ID is assigned (which allows for tracking by the Participant and the custodian/agent);

(b) Replace references to the confirmation ticket and confirmation status types generated by PTS/PBS with a list of the SPA Transaction Status types available in the SPA DWAC transaction life cycle; and

(c) Add a note that the information is available via API and that information on APIs is available on the DTCC API Marketplace via *https://www.dtcc.com/api.*

(3) Replace the entirety of the ''Associated PTS/PBS File Functions'' subsection with the new ''Associated SPA Portal Navigation/File Functions/Application Programming Interface (APIs)'' subsection. The new subsection would provide a table of the applicable SPA Function access path and a description of the function, as well as a row reflecting API and the continuing availability of the CCF Batch Files.

(b) The Operational Arrangements

(i) In Section II.B.2.c (DWAC), (i) add a reference to the SPA system for processing DWAC transactions; (ii) replace a reference to DWAC with ''SPA system;'' and (iii) replace a reference to PTS/PBS with ''SPA system.''

2. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 (''Act'') requires, *inter alia,* that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[13] As described above, the proposed rule change would amend the Deposits Guide and the Operational Arrangements to reflect the upcoming migration of the DWAC functionality for Participants and FAST Agents from the legacy PTS/PBS system to the new SPA system. By migrating the DWAC functionality to a system with enhanced usability, flexibility, and resiliency, the proposed rule change is designed to support a more effective and efficient DTC securities processing model. Accordingly, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act, cited above.

The proposed rule changes are also designed to be consistent with Rule 17ad–22(e)(21) which requires, in part, that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves.[14] As described above, by migrating the DWAC functionality to a system with enhanced usability, flexibility, and resiliency, the proposed rule change is designed to support a more effective and efficient DTC securities processing model which

[10] For more information about FAST, *see* Securities Exchange Act Release Nos. 12353 (Apr. 20, 1976), 41 FR 17823 (Apr. 28, 1976) (SR–DTC–76–3); 13342 (Mar. 8, 1977) (SR–DTC–76–3); 14997 (Jul. 26, 1978), 43 FR 33977 (Aug. 2, 1978) (SR–DTC–78–11); 21401 (Oct. 16, 1984) (SR–DTC–84–8); 31941 (Mar. 3, 1993), 58 FR 13291 (Mar. 10, 1993) (SR–DTC–92–15); 46956 (Dec. 6, 2002), 67 FR 77115 (Dec. 16, 2002) (SR–DTC 2002–15); 64191 (Apr. 5, 2011), 76 FR 20061 (Apr. 11, 2011) (SR–DTC–2010–15).

[11] For more information about the DWAC service, *see* Securities Exchange Act Release No. 30283 (Jan. 23, 1992), 57 FR 3658 (Jan. 30, 1992) (SR–DTC–91–16).

[12] Pursuant to the proposed rule change, DTC would also remove ''Standard'' from the references to ''Eastern Standard Time'' in this subsection.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17ad–22(e)(21).

would make DTC more effective and efficient in meeting the requirements of its participants and the markets it serves, in accordance with the requirements of Rule 17ad–22(e)(21).

(B) Clearing Agency's Statement on Burden on Competition

DTC believes that the proposed rule change to amend the Deposits Guide and the Operational Arrangements to reflect the upcoming migration of the DWAC functionality for Participants and FAST Agents from the legacy PTS/PBS system to the new SPA system would not have any impact on competition.[15] The proposed rule change would migrate the DWAC functionality to a system with enhanced usability and flexibility that will be available to all Participants and FAST Agents equally at no additional cost or effort to them. In light of the foregoing, DTC does not believe that the proposed rule change would impose a burden on competition.[16]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right to not respond to any comments received.

[15] 15 U.S.C. 78q–1(b)(3)(I).

[16] *Id.*

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b–4 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.

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–DTC–2024–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–DTC–2024–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*dtcc.com/legal/sec-rule-filings*). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–DTC–2024–004 and should be submitted on or before May 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–07640 Filed 4–10–24; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 12372]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: ''Ink and Ivory: Drawings and Photographs Selected With James Ivory'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition ''Ink and Ivory: Drawings and Photographs Selected with James Ivory'' at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C.

6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–07633 Filed 4–10–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12375]

Computer Matching Agreement Between the Social Security Administration and the Department of State Office of Retirement

AGENCY: Department of State (DOS).

ACTION: Notice of New Matching Program.

SUMMARY: The Social Security Administration (SSA) will provide the Department of State, Office of Retirement (DOS) Social Security numbers (SSN) verifications and Social Security disability benefit information concerning disability annuitants who are receiving Foreign Service Disability Annuity. DOS will use the benefit information to determine the offset amount for Foreign Service Disability Annuity payments.

DATES: Please submit comments on or before June 18, 2024. The matching program will begin on June 18, 2024, unless comments have been received from interested members of the public that require modification and republication of the notice. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months if the respective Data Integrity Boards determine that the matching program will be conducted without change; and DOS and SSA have conducted the matching program in compliance with the original agreement.

ADDRESSES: You may submit comments via mail to: Edward Capers, Jr., Director, Department of State, Office of Retirement, Room SA–1 H620, 2401 E ST NW, Washington, DC 20522, telephone (202) 261–8960, or via email at *CapersE@State.Gov.*

FOR FURTHER INFORMATION CONTACT: Susan Farrar, Deputy Director, Department of State, Office of Retirement, at (202) 261–8961.

SUPPLEMENTARY INFORMATION: DOS is required to reduce the Foreign Service Disability annuities of individuals receiving Social Security disability benefits. DOS must rely on the annuitant to report the correct amount of Social Security benefits. However, DOS has found that many beneficiaries fail to report accurate information. Information from SSA is the most effective means available for verifying receipt and amount of Social Security disability benefits. The most cost-effective and efficient way to obtain this information is via the computer transfer matching process.

Participating Agencies: DOS and SSA.

Authority for Conducting the Matching Program: DOS's authority to participate in this matching program derives from the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, and the regulations and guidance promulgated thereunder. Section 1106 of the Social Security Act (Act) (42 U.S.C. 1306) and the regulations promulgated thereunder provide legal authority for SSA's disclosures in this agreement (20 CFR part 401). Section 7213 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) (Pub. L. 108–458) provides SSA authority to add a death indicator to verification routines that the agency determines to be appropriate.

Purpose(s): The purpose of this matching program between DOS and SSA is to assist DOS in meeting its legal obligation to offset specific benefits payable by DOS to Foreign Service disability annuitants, child survivor annuitants, and spousal survivor annuitants. SSA will disclose to DOS benefit information regarding individuals who receive benefits from SSA under Title II of the Social Security Act, which DOS will use to determine an individual's eligibility to receive benefits from DOS and to compute the benefits it provides at the correct rate.

Categories of Individuals: The individuals about whom DOS maintains information that are involved in this matching program include retired Federal Foreign Service employees who are eligible or potentially eligible to receive a disability annuity from DOS (Foreign Service disability annuitants), and surviving children and surviving spouses of those Foreign Service disability annuitants who are themselves eligible or potentially eligible to receive an annuity from DOS. The individuals about who SSA maintains information that are involved in this matching program include those who receive benefits from SSA under Title II of the Social Security Act.

Categories of Records: The categories of records involved in the data match from DOS include information about those individuals who have applied for or are eligible or potentially eligible for Foreign Service disability annuitant benefits. Specifically, full name, Social Security number (SSN), date of birth, and a system indicator required to extract information from SSA's systems. For those individuals for whom SSA has a record, SSA will provide DOS with information about an individual's beneficiary status and any associated benefit information; for those individuals for whom SSA cannot match the SSN, SSA will return an appropriate code to DOS.

System(s) of Records: SSA's systems of records involved in this matching program are designated the Master Files of SSN Holders and SSN Applications (the Enumeration System), 60–0058, last fully published at 87 FR 263 on January 4, 2022. Master Beneficiary Record, 60–0090, last fully published on January 11, 2006 (71 FR 1826) and amended on December 10, 2007 (72 FR 69723) July 5, 2013 (78 FR 40542), July 3, 2018 (83 FR 31250–31251), and November 1, 2018 (83 FR 54969). DOS will provide data from Human Resources Records, State-31, last fully published on July 19, 2013 (78 FR 43258). The information in these systems of records may be updated during the effective period of this agreement as required by the Privacy Act. The systems of records involved in this information exchange have routine uses permitting the disclosures needed to conduct this exchange.

Edward Capers, Jr.,

Director, Office of Retirement, U.S. Department of State.

[FR Doc. 2024–07632 Filed 4–10–24; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice: 12376]

Meeting on Implementation of the United States-Singapore Free Trade Agreement Environment Chapter and Biennial Review Under the United States-Singapore Memorandum of Intent on Environmental Cooperation

AGENCY: U.S. Department of State.

ACTION: Notice of meetings and request for comments; invitation to public session.

SUMMARY: The U.S. Department of State and the Office of the United States Trade Representative (USTR) are providing notice that the United States

and Singapore intend to hold a meeting on implementation of Chapter 18 (Environment) of the United States-Singapore Free Trade Agreement (FTA) and a biennial review under the Memorandum of Intent between the United States of America and the Republic of Singapore on Cooperation in Environmental Matters (MOI) on April 19, 2024. The purposes of these two meetings, respectively, are to review implementation of FTA Chapter 18 (Environment) and to review the results of environmental cooperation under the MOI guided by the 2022–2023 Plan of Action (POA) and to approve the 2024–2025 POA.

DATES: The joint public session of the meeting on implementation of Chapter 18 (Environment) of the United States-Singapore FTA and the biennial review under the MOI will be held by teleconference on April 19, 2024, from 12 p.m. to 1 p.m. EDT. Instructions on submitting requests to participate in the virtual public session or on submitting questions or comments are under the heading **ADDRESSES**. Submissions should be made in writing no later than April 12, 2024.

ADDRESSES: Requests to participate in the virtual public session and written comments or questions should use ''United States-Singapore FTA Environment Chapter Implementation/MOI Review Meetings'' as the subject line and be submitted to both: (1) Merideth Manella, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality, by email to *ManellaM@state.gov* and (2) Amy Kreps, Office of the United States Trade Representative, by email to *Amy.S.Kreps2@ustr.eop.gov.*

When preparing comments, submitters are encouraged to refer to Chapter 18 of the FTA and/or the MOI, as relevant (available at *https://ustr.gov/sites/default/files/Sngapore-Environment%20Chapter.pdf* and *https://2001-2009.state.gov/g/oes/rls/or/22193.htm*). In your email, please include your full name and organization.

If you have access to the internet, you can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching for docket number DOS–2024–0014.

FOR FURTHER INFORMATION CONTACT: Merideth Manella, (202) 286–5271, *ManellaM@state.gov* or Amy Kreps, (202) 881–8903, *Amy.S.Kreps2@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of State and USTR invite interested organizations and members of the public to submit comments or suggestions regarding any issues that should be discussed at the meetings and to participate in a virtual public session that will be held on April 19, 2024 at 12 p.m. EDT via teleconference. Instructions on how to submit comments or to participate in the virtual public session are under the heading **ADDRESSES**.

Article 18.4 of the FTA provides for institutional arrangements to discuss matters related to the operation of Chapter 18 (Environment). Article 18.5 further provides for opportunities for public participation in the discussion of matters related to the operation of Chapter 18 (Environment).

Section III of the MOI establishes that the United States and Singapore plan to meet at least biennially to review the status of cooperation under the MOI and that the two governments intend to devise and update a Plan of Action setting out cooperative projects to be pursued.

Visit the Department of State website at *www.state.gov* and the USTR website at *www.ustr.gov* for more information.

Scott B. Ticknor,

Director, Office of Environmental Quality, U.S. Department of State.

[FR Doc. 2024–07681 Filed 4–10–24; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or the ''Department''), Treasury proposes to modify a current Treasury system of records titled, ''Department of the Treasury, Treasury .001—Treasury Payroll and Personnel System'' System of Records. The records and information collected and maintained in this system includes, but are not limited to: Maintaining current and historical payroll records that are used to compute and audit pay entitlement; to record history of pay transactions; to record deductions, leave accrued and taken, bonds due and issued, taxes paid; maintaining and distributing Leave and Earnings statements; commence and terminate allotments; answer inquiries and process claims; and maintaining current and historical personnel records and preparing individual administrative transactions relating to education and training; classification; assignment; career development; evaluation; promotion, compensation, separation and retirement; making decisions on the rights, benefits, entitlements and the utilization of individuals; providing a data source for the production of reports, statistical surveys, rosters, documentation, and studies required for the orderly personnel administration within Treasury; maintaining employment history; and perform personnel and payroll functions for Federal agencies for which Treasury is a cross-services provider and to conduct activities necessary to carry-out the official HR line of business for all Federal departments and agencies that are serviced by the National Finance Center (NFC); producing of reports, statistical surveys, rosters, documentation, and studies required for the orderly personnel administration within Treasury, and maintaining information about Treasury personnel and their dependents for needs and status assessments to determine if they are entitled to a benefit related to a natural or man-made disaster, a public health emergency, or similar crisis.

DATES: Submit comments on or before May 13, 2024. The modification of the system of records notice will be applicable on May 13, 2024.

ADDRESSES: Written comments on this notice may be submitted electronically through the Federal government eRulemaking portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury to make the comments available to the public. Please note that comments submitted through *https://www.regulations.gov* will be public and can be viewed by members of the public. Due to COVID–19-related restrictions, Treasury has suspended its ability to receive public comments by mail.

In general, Treasury will post all comments to *https://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Colleen Heller-Stein, 202–927–4800, Acting Deputy Assistant Secretary for Human Resources/Chief Human Capital Officer, 1500 Pennsylvania Avenue NW, Washington, DC 20220. For privacy issues, please contact: The Department of the Treasury, Office of Privacy and Civil Liberties via email at *privacy@treasury.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or the ''Department''), Treasury proposes to modify a current Treasury system of records titled, ''Department of the Treasury, Treasury .001—Treasury Payroll and Personnel System'' System of Records.

The proposed modification to the system of records makes the following substantive changes:

Treasury is modifying and publishing the modified system of records notice to update the categories of the records in the system and to add (1) update the system location and system managers addresses, (2) one authority to collect, and (3) one new routine use 27. This new routine use authorize disclosure to the Department of Justice pursuant to Executive Order 14074, *Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety* (the ''Executive Order'') the President issued on May 25, 2022. Section 5 of the Executive Order directs the Attorney General to establish the National Law Enforcement Accountability Database (the NLEAD) as ''a centralized repository of official records documenting instances of law enforcement officer misconduct as well as commendations and awards.''

Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

Dated: February 28, 2024.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER:

Department of the Treasury.001—Treasury Payroll and Personnel System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The Shared Development Center of the Treasury Personnel/Payroll System is located at 1750 Pennsylvania Avenue NW, Suite 1300, Washington, DC 20220. The Treasury Personnel System processing site is located at the Internal Revenue Service Detroit Computing Center, 985 Michigan Avenue, Detroit, MI 48226. The Treasury Payroll processing site is located at the United States Department of Agriculture National Finance Center, 13800 Old Gentilly Road, New Orleans, LA 70129.

The locations at which the system is maintained by all Treasury bureaus and offices and their associated field offices are:

(1) Departmental Offices (DO):

a. 1500 Pennsylvania Ave. NW, Washington, DC 20220.

b. The Office of Inspector General (OIG): 875 15th Street NW, Washington, DC 20005.

c. Special Inspector General for Pandemic Recovery (SIGPR): 1500 Pennsylvania Avenue NW, Washington, DC 20220.

d. Special Inspector General for the Troubled Asset Relief Program (SIGTARP): 1801 L Street NW, Washington, DC 20220.

e. Treasury Inspector General for Tax Administration (TIGTA): 901 D Street SW, Suite 600, Washington, DC 20024–2169.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW, Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW, Washington, DC 20219.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW, Washington, DC 20228.

(5) Fiscal Service (FS): 401 14th Street SW, Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue NW, Washington, DC 20224.

(7) United States Mint (MINT): Avery Street Building, 320 Avery Street, Parkersburg, WV, and 801 9th St. NW, Washington, DC 20220.

(8) Bureau of Public Debt (BPD): 999–E Street NW, Washington, DC 20239.

(9) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

SYSTEM MANAGER

Department of the Treasury: Official prescribing policies and practices: Chief Human Capital Officer/Deputy Assistant Secretary for Human Resources, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The systems managers for the Treasury bureaus and offices are:

(1) a. DO: Deputy Assistant Secretary for Human Resources/Chief Human Capital Officer, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

b. OIG: Personnel Officer, 875 15th Street NW, Washington, DC 20005.

c. SIGPR: Special Inspector General for Pandemic Recovery, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

d. SIGTARP: Special Inspector General for the Troubled Asset Relief Program, 1801 L. Street NW, Washington, DC 20220.

e. TIGTA: Director, Human Resources, 901 D Street SW, Suite 600, Washington, DC 20024–2169.

(2) TTB: Chief, Personnel Division, 1310 G St. NW, Washington, DC 20220.

(3) OCC: Director, Human Resources, 400 7th Street SW, Washington, DC 20219.

(4) BEP: Chief, Office of Human Resources, 14th & C Streets SW, Room 202–13A, E&P Annex, Washington, DC 20228.

(5) FS: Director, Personnel Management Division, 3700 East-West Hwy., Room 115–F, Hyattsville, MD 20782.

(6) IRS: Associate Director, Transactional Processing Operations, 1111 Constitution Avenue NW, CP6, A:PS:TP, 2nd Floor, Washington, DC 20224.

(7) MINT: Associate Director for Workforce Solutions, 801 9th Street NW, 7th Floor, Washington, DC 20220.

(8) FinCEN: Chief of Personnel and Training, Vienna, VA 22183–0039.

A list of the Federal agencies for which Treasury is a cross-services provider and their respective system managers may be obtained by contacting the Chief Human Capital Officer/Deputy Assistant Secretary for Human Resources, at the address shown above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; 5 U.S.C. chapter 63 and the implementing regulations thereto; Homeland Security Presidential Directive 12 (HSPD–12), and Treasury Directive 80–05, Records and Information Management Program, Executive Orders 9397, as amended by 13478, 9830, and 12107, and the American Rescue Plan Act of 2021 (Pub. L. 117–2).

PURPOSE(S) OF THE SYSTEM:

The purposes of the system includes, but are not limited to: (1) Maintaining current and historical payroll records that are used to compute and audit pay entitlement; to record history of pay transactions; to record deductions, leave accrued and taken, bonds due and issued, taxes paid; maintaining and

distributing Leave and Earnings statements; commence and terminate allotments; answer inquiries and process claims; and (2) maintaining current and historical personnel records and preparing individual administrative transactions relating to education and training; classification; assignment; career development; evaluation; promotion, compensation, separation and retirement; making decisions on the rights, benefits, entitlements and the utilization of individuals; providing a data source for the production of reports, statistical surveys, rosters, documentation, and studies required for the orderly personnel administration within Treasury; (3) maintaining employment history; (4) performing personnel and payroll functions for Federal agencies for which Treasury is a cross-services provider and to conduct activities necessary to carry-out the official HR line of business for all Federal departments and agencies that are serviced by the National Finance Center (NFC), (5) producing of reports, statistical surveys, rosters, documentation, and studies required for the orderly personnel administration within Treasury; and (6) maintaining information about Treasury personnel and their dependents for needs and status assessments to determine if they are entitled to a benefit, including leave related to a family condition, a particular medical condition, a natural or man-made disaster, a public health emergency, or similar crisis.

Consistent with Treasury's information-sharing mission, information stored in Department of the Treasury, Treasury .001—Treasury Payroll and Personnel System may be shared with other Treasury Bureaus, as well as appropriate federal, state, local, tribal, foreign, or international government agencies. This sharing will only occur after Treasury determines that the receiving Bureau or agency has a need to know the information to carry out national security, law enforcement, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Employees, former employees, and applicants for employment, in all Treasury Department bureaus and offices. (2) Employees, former employees, and applicants for employment of Federal agencies for which the Treasury Department is a cross-services provider. (3) Dependents and family members of employees and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in this system includes such data as:

(1) Employee identification and status data such as name, records that establish an individual's identity, social security number, date of birth, sex, race and national origin designator, awards received, suggestions, work schedule, type of appointment, education, training courses attended, veterans preference, and military service;

(2) employment data such as service computation for leave, date probationary period began, date of performance rating, performance contract, and date of within-grade increases;

(3) position and pay data such as position identification number, pay plan, step, salary and pay basis, occupational series, organization location, and accounting classification codes;

(4) payroll data such as earnings (overtime and night differential), deductions (Federal, state, and local taxes, bonds and allotments), and time and attendance data. Time and attendance data includes, but is not limited to, any information necessary to administer any of Treasury's leave programs, such as all forms of leave requests or applications (including in connection with any voluntary leave transfer program and including leave donated or used), balances, and credits, including Leave Without Pay (LWOP); any supporting documentation provided by the leave requestor or on behalf of the leave requester, which may include medical records; and information related to all other absence types, including Absent Without Leave (AWOL) and Suspension).

(5) employee retirement and Thrift Savings Plan data;

(6) employment history, and

(7) tables of data for editing, reporting, and processing personnel and pay actions. These include nature of action codes, civil service authority codes, standard remarks, signature block table, position title table, financial organization table, and salary tables.

(8) employees and former employees' dependents and family members' data, including but not limited to full name, date of birth, age, and healthcare provider information.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject of the record, supervisors, and non-Federal sources such as private employers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act of 1974, 5 U.S.C. 552a(b), records and/or information or portions thereof maintained as part of this system may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To the United States Department of Justice (''DOJ'', for the purpose of representing or providing legal advice to the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(a) The Department of any bureau or office thereof;

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee; or

(d) The United States, when the Department determines that litigation is likely to affect the Department or any of its bureaus and offices; and the use of such records by the DOJ is deemed by the DOJ or the Department to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected.

(2) To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, background investigation, license, contract, grant, or other benefit, or if the information is relevant and necessary to a Treasury decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request;

(3) To a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) To the National Archives and Records Administration Archivist (or the Archivist's designee) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

(5) To appropriate agencies, entities, and person when (1) the Department of

the Treasury suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(6) To another Federal agency or Federal entity, when the Department of the Treasury 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;

(7) Furnish data to the Department of Agriculture, National Finance Center (which provides payroll and personnel processing services for Treasury under a cross-servicing agreement) affecting the conversion of Treasury employee payroll and personnel processing services; the issuance of paychecks to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, some through electronic funds transfer;

(8) Furnish the Internal Revenue Service and other jurisdictions which are authorized to tax employees' compensation with wage and tax information in accordance with a withholding agreement with the Department of the Treasury pursuant to *5 U.S.C. 5516,* 5517, and 5520, for the purpose of furnishing employees with IRS Forms W–2 that report such tax distributions;

(9) Provide records to the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(10) Furnish another Federal agency with information necessary or relevant to effect interagency salary or administrative offset, except that addresses obtained from the Internal Revenue Service shall not be disclosed to other agencies; to furnish a consumer reporting agency information to obtain commercial credit reports; and to furnish a debt collection agency information for debt collection services. Current mailing addresses acquired from the Internal Revenue Service are routinely released to consumer reporting agencies to obtain credit reports and are arguably relevant to debt collection agencies for collection services;

(11) Disclose information to a Federal, state, local, or foreign agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, that has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(12) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena where arguably relevant to a proceeding, or in connection with criminal law proceedings;

(13) Disclose information to foreign governments in accordance with formal or informal international agreements;

(14) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(15) Provide information to the news media in accordance with guidelines contained in *28 CFR 50.2,* which relates to civil and criminal proceedings;

(16) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(17) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, *5 U.S.C. 7111* and 7114;

(18) Provide wage and separation information to another agency, such as the Department of Labor or Social Security Administration, as required by law for payroll purposes;

(19) Provide information to a Federal, state, or local agency so that the agency may adjudicate an individual's eligibility for a benefit, such as a state employment compensation board, housing administration agency, and Social Security Administration;

(20) Disclose pertinent information to appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing, a statute, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(21) Disclose information about particular Treasury employees to requesting agencies or non-Federal entities under approved computer matching efforts, limited only to those data elements considered relevant to making a determination of eligibility under particular benefit programs administered by those agencies or entities or by the Department of the Treasury or any constituent unit of the Department, to improve program integrity, and to collect debts and other money owed under those programs (*e.g.* matching for delinquent loans or other indebtedness to the government);

(22) Disclose to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, the names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees, for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement activities as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, *Pub. L. 104–193*);

(23) Disclose to contractors, grantees, experts, consultants, students, other federal agencies, states and local governments, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Department of the Treasury as required for the production of reports, descriptive statistical surveys, rosters, documentation, and studies required for the orderly administration of personnel and payroll-related issues within Treasury;

(24) Disclose information to other Federal agencies with whom the Department has entered into a cross servicing agreement that provides for the delivery of automated human resources operations. These operations may include maintaining current and historical payroll and personnel records, and providing reports, statistical surveys, rosters, documentation, and studies as required by the other federal agency to support its personnel administration activities; and

(26) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(27) To disclose, to the extent permitted by law, official records documenting former or current Treasury law enforcement officers' commendations, awards, and misconduct to the Department of Justice (DOJ) as required pursuant to Executive Order 14074, Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, to provide a central source for federal, state, local, and tribal agencies to search when making suitability determinations during the recruitment, investigation, hiring, promotion, and retention of law enforcement personnel.

Disclosure to consumer reporting agencies: Disclosures may be made pursuant to *5 U.S.C. 552*a(b)(12) and section 3 of the Debt Collection Act of 1982, Public Law 97–365; debt information concerning a government claim against an individual is also furnished, in accordance with *5 U.S.C. 552*a(b)(12) and section 3 of the Debt Collection Act of 1982, to consumer reporting agencies to encourage repayment of an overdue debt. Disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act, *15 U.S.C. 1681*a(f), or the Federal Claims Collection Act of 1966, *31 U.S.C. 701*(a)(3).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Microfiche, and hard copy are stored on magnetic disc, tape, digital media, and CD–ROM. Disbursement records are stored at the Federal Records Center.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved alphabetically by name of subject or complainant, by case number, by special agent name, by employee identifying number, by victim, and by witness case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The current payroll and personnel system and the personnel and payroll system's master files are kept as Start Printed Page 78269 electronic media. Information rendered to hard copy in the form of reports and payroll information documentation is also retained in an electronic media format. Employee records are retained in automated form for as long as the employee is active on the system (separated employee records are maintained in an ''inactive'' status). Files are purged in accordance with Treasury Directive 80–05, ''Records and Information Management Program.''

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Entrances to data centers and support organization offices are restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of similar sensitivity.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual, or for contesting the contents of a record.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Notice of this system of records was last published in full in the **Federal Register** on July 2, 2021 (86 FR 35376) as Department of the Treasury, Treasury .001—Treasury Payroll and Personnel System.

[FR Doc. 2024–07685 Filed 4–10–24; 8:45 am]

BILLING CODE 4810–AK–P

FEDERAL REGISTER

Vol. 89 Thursday,
No. 71 April 11, 2024

Part II

Department of Transportation

Federal Transit Administration

49 CFR Part 673
Public Transportation Agency Safety Plans; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 673

[Docket No. FTA–2023–0007]

RIN 2132–AB44

Public Transportation Agency Safety Plans

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Federal Transit Administration (FTA) is publishing a final rule for Public Transportation Agency Safety Plans (PTASP). This final rule includes requirements for Agency Safety Plans (ASP), Safety Committees, cooperation with frontline transit worker representatives in the development of ASPs, safety risk reduction programs, safety performance targets, de-escalation training for certain transit workers, and addressing infectious diseases through the Safety Management System (SMS) process. This final rule also finalizes revisions to the regulation to coordinate and align with other FTA programs and safety rulemakings.

DATES: The effective date of this rule is May 13, 2024.

ADDRESSES: FTA's Office of Transit Safety and Oversight (TSO) will host a webinar to discuss the requirements of the Public Transportation Agency Safety Plans (PTASP) final rule. Visit *https://www.transit.dot.gov/ptasp* for more information and to RSVP. Please visit *https://www.transit.dot.gov/ptasp* to register for webinars and for information about future webinars. FTA is committed to providing equal access for all webinar participants. If you need alternative formats, options, or services, contact *FTA-Knowledge@dot.gov* at least three business days prior to the event. If you have any questions, please email *FTA-Knowledge@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For program matters, contact Stewart Mader, Office of Transit Safety and Oversight, (202) 366–9677 or *stewart.mader@dot.gov.* For legal matters, contact Heather Ueyama, Office of Chief Counsel, (202) 366–7374 or *heather.ueyama@dot.gov.*

Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

This final rule amends the Public Transportation Agency Safety Plans (PTASP) regulation at 49 CFR part 673 with new requirements that implement statutory changes in the Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58; November 15, 2021). The Bipartisan Infrastructure Law amends FTA's safety program at 49 U.S.C. 5329 and adds to the PTASP requirements for public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 (Chapter 53). This final rule also builds on the existing PTASP final rule published in 2018 to enhance the Safety Management System (SMS) process and finalizes revisions to the regulation to coordinate and align with other FTA programs and safety rulemakings.

A. FTA Efforts To Address Transit Worker Safety

The Bipartisan Infrastructure Law amended the PTASP requirements by adding a risk reduction program that addresses, at a minimum, transit worker safety and reduction of pedestrian/bus collisions. Transit worker safety is a top priority for FTA. Since the previous PTASP Final Rule became effective in 2019,[1] FTA has taken a series of actions to improve transit worker safety and address the risk of assaults on transit workers. In 2019, FTA issued a notice in the **Federal Register** advising transit agencies subject to the PTASP regulation that where instances of operator assault are identified, transit agencies should, as required by the PTASP regulation, take steps to identify mitigations or strategies necessary to reduce the likelihood and severity of occurrences of operator assault.[2]

In 2020, FTA launched the Bus Operator Compartment Redesign Program [3] to improve safety, operational efficiency, and passenger accessibility. In 2021, FTA launched the Enhanced Transit Safety and Crime Prevention Initiative,[4] issued a Request for Information (RFI) on Transit Worker Safety,[5] and used its Safety Risk Management (SRM) process to assess the safety risk of the potential consequences of identified hazards associated with assaults on transit workers. Also in 2021, the National Transit Institute began offering Assault Awareness and Prevention for Transit [6] training courses sponsored by FTA.

In 2022, shortly after enactment of the Bipartisan Infrastructure Law, FTA issued a Dear Colleague Letter [7] informing transit agencies of the statutory changes to PTASP requirements and establishing compliance dates for transit agencies to establish joint labor-management Safety Committees and revise Agency Safety Plans (ASP) in cooperation with frontline employee representatives to address Bipartisan Infrastructure Law requirements that strengthen frontline transit worker involvement in transit

[1] Public Transportation Agency Safety Plans, 83 FR 34418 (2018) (Codified at 49 CFR part 673). *https://www.federalregister.gov/documents/2018/07/19/2018-15167/public-transportation-agency-safety-plan.*

[2] Protecting Public Transportation Operators From the Risk of Assault, 84 FR 24196 (May 24, 2019). *https://www.federalregister.gov/documents/2019/05/24/2019-10281/protecting-public-transportation-operators-from-the-risk-of-assault.*

[3] Federal Transit Administration (March 2020). ''Redesign of Transit Bus Operator Compartment to Improve Safety, Operational Efficiency, and Passenger Accessibility (Bus Operator Compartment) Program.'' *https://www.transit.dot.gov/research-innovation/redesign-transit-bus-operator-compartment-improve-safety-operational-efficiency.*

[4] Federal Transit Administration (October 2021). ''Enhanced Transit Safety and Crime Prevention Initiative.'' *https://www.transit.dot.gov/regulations-and-programs/safety/enhanced-transit-safety-and-crime-prevention-initiative.*

[5] Federal Transit Administration (September 2021). ''Federal Transit Administration Announces Request for Information on Transit Worker Safety.'' *https://www.transit.dot.gov/about/news/federal-transit-administration-announces-request-information-transit-worker-safety.*

[6] Federal Transit Administration (October 2023). ''FTA-Sponsored Training Courses.'' *https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses.*

[7] Federal Transit Administration (February 17, 2022). ''Dear Colleague Letter: Bipartisan Infrastructure Law Changes to PTASP Requirements.'' *https://www.transit.dot.gov/safety/public-transportation-agency-safety-program/dear-colleague-letter-bipartisan-infrastructure.*

safety. FTA also published a notice in the **Federal Register** seeking comment on proposed changes and clarifications to the National Transit Database (NTD) Safety and Security (S&S) reporting requirements,[8] issued nine Special Directives on Required Actions Regarding Transit Worker Assault[9] to transit agencies accounting for 79% of all transit worker assaults reported to the NTD, and published a Notice of Funding Opportunity in the **Federal Register** for the Transit Worker and Rider Safety Best Practices Research Project.[10]

To implement Bipartisan Infrastructure Law requirements related to assaults on transit workers and vehicular and pedestrian accidents involving buses, FTA published three notices in the **Federal Register** in 2023: a notice finalizing NTD S&S reporting requirements to expand reporting,[11] a notice of proposed rulemaking (NPRM) seeking comment on proposed new PTASP requirements,[12] and a notice seeking comment on proposed changes to the National Public Transportation Safety Plan (National Safety Plan).[13] FTA also published a notice in the **Federal Register** seeking comment on a proposed General Directive on Required Actions Regarding Assaults on Transit Workers.[14] In addition, FTA is pursuing other policy actions on transit worker safety, including an advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** on Transit Worker Hours of Service and Fatigue Risk Management,[15] a planned NPRM on Transit Worker and Public Safety (RIN 2132–AB47),[16] and an NPRM on Rail Transit Roadway Worker Protection (RWP) published in the **Federal Register**.[17]

B. Statutory Authority

Congress directed FTA to establish a comprehensive Public Transportation Safety Program, one element of which is the requirement for PTASP, in the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141; July 6, 2012) (MAP–21), which was reauthorized by the Fixing America's Surface Transportation Act (Pub. L. 114–94; December 4, 2015). To implement the requirements of 49 U.S.C. 5329(d), FTA issued a final rule on July 19, 2018, that added part 673, ''Public Transportation Agency Safety Plans,'' to title 49 of the Code of Federal Regulations (83 FR 34418).

The Bipartisan Infrastructure Law continues the Public Transportation Safety Program and adds to the PTASP requirements for public transportation systems that receive Federal financial assistance under chapter 53.

C. Summary of Key Provisions

This rule finalizes FTA's implementation of several revisions to 49 U.S.C. 5329(d) enacted through the Bipartisan Infrastructure Law, including:

- Requirements for each recipient that serves an urbanized area with a population of fewer than 200,000 (small urbanized area) to:
  - Develop its ASP in cooperation with frontline employee representatives (49 U.S.C. 5329(d)(1)(B)); and
  - Address in its ASP strategies to minimize exposure to infectious diseases, consistent with guidelines of the Centers for Disease Control and Prevention (CDC) or a State health authority (49 U.S.C. 5329(d)(1)(D)).
- Requirements for each recipient of Urbanized Area Formula Program funds under section 5307 that serves an urbanized area with a population of 200,000 or more (large urbanized area) to:
  - Establish a Safety Committee that is convened by a joint labor-management process and consists of an equal number of (1) frontline employee representatives, selected by a labor organization representing the plurality of the frontline workforce employed by the recipient or, if applicable, a contractor to the recipient, to the extent frontline employees are represented by labor organizations; and (2) management representatives. (49 U.S.C. 5329(d)(5)). This Safety Committee has responsibility, at a minimum, for:
    - Approving the transit agency's ASP and any updates to the ASP before approval by the agency's Board of Directors or equivalent entity (49 U.S.C. 5329(d)(1)(A));
    - Setting safety performance targets for the safety risk reduction program using a three-year rolling average of the data submitted by the transit agency to the NTD (49 U.S.C. 5329(d)(4)(A));
    - Identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment (49 U.S.C. 5329(d)(5)(A)(iii)(I));
    - Identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended (49 U.S.C. 5329(d)(5)(A)(iii)(II)); and
    - Identifying safety deficiencies for purposes of continuous improvement (49 U.S.C. 5329(d)(5)(A)(iii)(III)).
  - Establish a safety risk reduction program for transit operations to improve safety by reducing the number and rates of accidents, injuries, and assaults on transit workers based on data submitted to the NTD, including:
    - A reduction of vehicular and pedestrian accidents involving buses that includes measures to reduce visibility impairments for bus operators that contribute to accidents, including retrofits to buses in revenue service and specifications for future procurements that reduce visibility impairments; and
    - The mitigation of assaults on transit workers, including the deployment of assault mitigation infrastructure and technology on buses, including barriers to restrict the unwanted entry of individuals and objects into bus operator workstations when a risk analysis performed by the Safety Committee determines that such barriers or other measures would reduce assaults on and injuries to transit workers (49 U.S.C. 5329(d)(1)(I)).
  - Allocate not less than 0.75 percent of its section 5307 funds to safety-related projects eligible under section 5307 (safety set-aside). In the event the transit agency fails to meet a safety risk reduction program safety performance target:

[8] National Transit Database Safety and Security Reporting Changes and Clarifications, 87 FR 42539 (July 15, 2022). *https://www.federalregister.gov/documents/2022/07/15/2022-15167/national-transit-database-safety-and-security-reporting-changes-and-clarifications.*

[9] Federal Transit Administration (October 2022). ''Special Directives on Required Actions Regarding Transit Worker Assault.'' *https://www.transit.dot.gov/regulations-and-guidance/safety/fta-special-directives#SDTWA.*

[10] Federal Transit Administration (December 2022). ''Transit Worker and Rider Safety Best Practices Research Project.'' *https://www.transit.dot.gov/funding/grants/TWRS.*

[11] National Transit Database Safety and Security Reporting Changes and Clarifications, 88 FR 11506 (February 23, 2023). *https://www.federalregister.gov/documents/2023/02/23/2023-03789/national-transit-database-safety-and-security-reporting-changes-and-clarifications.*

[12] Public Transportation Agency Safety Plans, 88 FR 25336 (April 26, 2023). *https://www.federalregister.gov/documents/2023/04/26/2023-08777/public-transportation-agency-safety-plans.*

[13] National Public Transportation Safety Plan, 88 FR 34917 (May 31, 2023). *https://www.federalregister.gov/documents/2023/05/31/2023-11551/national-public-transportation-safety-plan.*

[14] General Directive 24–1: Required Actions Regarding Assaults on Transit Workers, 88 FR 88213 (December 20, 2023). *https://www.federalregister.gov/documents/2023/12/20/2023-28002/proposed-general-directive-24-1-required-actions-regarding-assaults-on-transit-workers.*

[15] Transit Worker Hours of Service and Fatigue Risk Management, 88 FR 74107 (October 30, 2023). *https://www.federalregister.gov/documents/2023/10/30/2023-23916/transit-worker-hours-of-service-and-fatigue-risk-management.*

[16] Office of Information and Regulatory Affairs (2023). Unified Agenda: ''Transit Worker and Public Safety.'' *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2132-AB47.*

[17] Rail Transit Roadway Worker Protection, 89 FR 20605 (March 25, 2024). *https://www.federalregister.gov/documents/2024/03/25/2024-06251/rail-transit-roadway-worker-protection.*

- Allocate the transit agency's safety set-aside in the following fiscal year to projects that are reasonably likely to assist the agency in meeting the target, including modifications to rolling stock and de-escalation training (49 U.S.C. 5329(d)(4)).
- Ensure the agency's comprehensive staff training program includes maintenance personnel and de-escalation training (49 U.S.C. 5329(d)(1)(H)(ii)).
- Address in its ASP strategies to minimize exposure to infectious diseases, consistent with guidelines of the CDC or a State health authority (49 U.S.C. 5329(d)(1)(D)).

Many of FTA's proposals from the NPRM are finalized without change. In response to comments, FTA made minor, non-substantive changes to § 673.5 related to the terms ''injury,'' ''performance target,'' and ''safety performance target.''

In addition, the final rule includes amended requirements related to the role of the Safety Committee, Safety Committee procedures, the role of the Accountable Executive, and the safety risk reduction program.

In response to comments, FTA has made minor changes to the Safety Committee requirements in § 673.19. These changes provide additional clarity and specificity regarding Safety Committee procedures. FTA has revised § 673.19(c)(2) to provide that Safety Committee procedures must address how meeting notices will be developed and shared. FTA added a requirement at § 673.19(c)(4) that Safety Committee procedures include the compensation policy established by the transit agency for participation in Safety Committee meetings. In this provision, FTA is not requiring transit agencies to compensate members of the Safety Committee; rather, it is requiring the transit agency to adopt a policy regarding Safety Committee compensation and that the Safety Committee procedures include the policy the transit agency has adopted.

In response to comments, FTA also has revised §§ 673.19(c)(6) and (c)(8) to clarify that the Safety Committee procedures must document the Safety Committee's decision-making processes and to clarify that FTA is not requiring Safety Committees to make decisions through any specific voting mechanisms. Regarding Safety Committee disputes, FTA has revised § 673.19(c)(8) to clarify that the ASP must include procedures for how the Safety Committee will manage disputes to ensure that it carries out its operations, and may use the dispute resolution or arbitration process from the transit agency's Collective Bargaining Agreement, or some other process that the Safety Committee develops and agrees upon. The Accountable Executive, however, may not have a tiebreaking role in resolving Safety Committee disputes, because that would be inconsistent with the statutory requirements relating to the roles of Safety Committees. Additionally, FTA strengthened the focus of the provisions on cooperation with frontline transit workers by grouping requirements for Safety Committees and Cooperation with Frontline Transit Worker Representatives into a single Subpart C, titled ''Safety Committees and Cooperation with Frontline Transit Worker Representatives.''

In response to comments from across the spectrum of stakeholders expressing confusion about the safety risk reduction program and seeking clarity on the relationship between the safety risk reduction program and SMS, FTA has eliminated the proposed § 673.20 as a standalone section, and has moved the safety risk reduction program requirements originally proposed under § 673.20 to other sections of the rule. This reorganization better reflects how the required safety risk reduction program activities are carried out using existing components of SMS.

Requirements that pertain to establishing the safety risk reduction program, general safety risk reduction program elements, and setting safety performance targets are now included in § 673.11, which identifies items that transit agencies must include in their ASPs. Requirements for carrying out the safety risk reduction program using SMS processes are in § 673.25, which now addresses safety risk reduction program requirements associated with Safety Risk Management, and § 673.27, which now includes safety risk reduction program requirements associated with Safety Assurance. By moving these requirements into the relevant SMS-related components of the regulation, FTA provides clear requirements for transit agencies to leverage existing SMS processes to support the safety risk reduction program. FTA confirms that the safety risk reduction program operates within an SMS and not outside of it or in conflict with it. Also in response to comments, FTA has clarified the requirements for large urbanized area providers and their Safety Committees to consider specific safety risk mitigations, including when the agency misses a safety performance target set by the Safety Committee.

Further, in response to comments and pursuant to statute, the final rule requires transit agencies to include or incorporate by reference into the ASP any safety risk mitigations relating to the safety risk reduction program that are identified and recommended by a large urbanized area provider's Safety Committee based on a safety risk assessment. These requirements are described in §§ 673.11(a)(7)(iv) and 673.25(d)(5). The Bipartisan Infrastructure Law requires at 49 U.S.C. 5329(d)(1)(I) that the ASP must include the safety risk reduction program, and that the safety risk reduction program must include mitigations, including (1) measures to reduce visibility impairments for bus operators that contribute to accidents, including retrofits to vehicles in revenue service and specifications for future procurements that reduce visibility impairments; and (2) the deployment of assault mitigation infrastructure and technology on buses. Accordingly, the statute requires the ASP to include these mitigations. The Safety Committee is tasked with identifying and recommending safety risk mitigations necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment. Therefore, as noted above, FTA is including the requirement that the ASP include safety risk mitigations related to the safety risk reduction program that are identified and recommended by the Safety Committee based on a safety risk assessment.

In response to comments, § 673.23(d)(1) clarifies the role of the Accountable Executive regarding implementation of mitigations recommended by the Safety Committee. The Accountable Executive must implement safety risk mitigations for the safety risk reduction program that are included in the ASP under § 673.11(a)(7)(iv). Given that the Accountable Executive has ultimate responsibility for carrying out the agency's ASP pursuant to § 673.5, the Accountable Executive is responsible for carrying out any mitigations included in the ASP.

In response to comments, § 673.23(d)(1) provides that the Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigations (*i.e.,* mitigations not related to the safety risk reduction program) that are recommended by the Safety Committee. As described in § 673.25(d)(6), if the Accountable Executive declines to implement such a mitigation, the Accountable Executive must prepare a written statement explaining its decision and must submit and present this explanation to the

Safety Committee and the Board of Directors.

D. Benefits and Costs

Most provisions in the final rule implement self-enacting statutory amendments made by the Bipartisan Infrastructure Law to 49 U.S.C. 5329, although some provisions are discretionary. The discretionary provisions include extending the de-escalation training requirement to all transit agencies subject to part 673, as well as requiring small public transportation providers to establish continuous improvement processes.

The requirements for de-escalation training and continuous improvement processes are predicted to reduce the risk of fatalities and injuries for transit workers, passengers, drivers, and pedestrians if transit agencies adopt safety risk mitigations that they would not have adopted otherwise. While FTA expects that agencies will be more likely to adopt safety risk mitigations to reduce the risk of transit worker assault and bus collisions, it does not have information to quantify or monetize potential benefits.

Agencies will incur costs to meet the requirements for de-escalation training and continuous improvement processes. FTA will also incur costs to notify agencies, update technical assistance resources, and conduct training, although the expected costs are minimal.

Table 1 summarizes the economic effects of the discretionary provisions in the final rule over the first ten years from 2024 to 2033 in 2021 dollars, assuming an effective date of 2024. On an annualized basis (discounted to 2023), the rule has estimated costs of $642,000 at a 3 percent discount rate and $635,000 at 7 percent. To quantify benefits and assess net benefits, FTA would need information on the specific safety interventions transit agencies would adopt to address the requirements.

TABLE 1—SUMMARY OF ECONOMIC EFFECTS FOR DISCRETIONARY RULEMAKING PROVISIONS, 2024–2033

[$2021, discounted to 2023]

Item	Total (undiscounted)	Annualized (3% discount)	Annualized (7% discount)
Benefits	Unquantified		
Costs:			
De-escalation training	$584,925	$59,040	$59,803
Continuous improvement processes	$5,881,933	582,913	575,558
Total costs	$6,466,858	641,954	635,362
Net benefits	Unquantified		

II. Notice of Proposed Rulemaking and Response to Comments

FTA issued an NPRM for Public Transportation Agency Safety Plans on April 26, 2023 (88 FR 25336).[18] The public comment period for the NPRM closed on June 26, 2023. FTA received 53 comment submissions to the rulemaking docket, including one that contained individual comments from 26 local transit unions. Commenters included States, members of Congress, transit agencies, labor organizations, trade associations, and individuals. FTA also received comments relevant to this rulemaking through the National Safety Plan docket (FTA–2023–0010). FTA has considered these comments and addresses them in the corresponding sections below. FTA also received ex parte comments about the rulemaking, which are summarized in the rulemaking docket. FTA addresses these comments in the corresponding sections below. Some comments were outside the scope of this rulemaking, and FTA does not respond to comments in this final rule that were outside the scope. Some comments expressed support for the NPRM without advocating for specific changes, and FTA acknowledges those comments were received and considered.

FTA reviewed all relevant comments and took them into consideration when developing the final rule. Below, the NPRM comments and responses are subdivided by their corresponding sections of the proposed rule and subject matter.

A. Section 673.1—Applicability

1. Funding Sources

Comments: Two commenters supported FTA's proposal to continue existing exemptions for operators of public transportation systems that receive only Federal financial assistance under 49 U.S.C. 5310 or 49 U.S.C. 5311.

One commenter requested additional clarification on applicability for operators who cease to meet the applicability criteria in § 673.1 but already have an ASP in place due to prior applicability.

One commenter recommended that applicability, particularly the requirement to create Safety Committees, should include operators that do not receive section 5307 funding, but that receive other funds or subsidy credit from a section 5307 recipient.

Response: FTA appreciates the comments that it received supporting the proposed revisions to the applicability section of this rule. As described in the NPRM, these revisions clarify FTA's existing practice regarding PTASP applicability. Accordingly, FTA will continue to defer regulatory action regarding the applicability of this regulation to operators of public transportation systems that only receive section 5310 and/or section 5311 funds. This final rule does not apply to an operator of a public transportation system that receives Federal financial assistance under only 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311, unless it operates a rail fixed guideway public transportation system.

FTA disagrees with the need to further clarify applicability for operators whose funding sources change. For non-rail fixed guideway public transportation systems, the final regulation applies only to operators that are recipients or subrecipients of Urbanized Area Formula Funding (section 5307) funds.

Similarly, FTA disagrees with the commenter who suggested that operators of public transportation systems who do not receive section 5307 funds but receive other types of funds or subsidies from a section 5307 recipient should automatically be required to meet the requirements of the regulation. FTA continues to apply the

[18] Public Transportation Agency Safety Plans, 88 FR 25336 (April 26, 2023). *https://www.federalregister.gov/documents/2023/04/26/2023-08777/public-transportation-agency-safety-plans.*

existing definitions of recipient and subrecipient. Accordingly, if a transit agency is a recipient or subrecipient of section 5307 funding, this regulation applies. The final rule does not change any existing PTASP requirements regarding applicability.

2. Publication Timing

Comments: One commenter recommended that FTA publish its final rules for part 673, part 674, and the updated National Safety Plan simultaneously in order to ensure consistency across programs and that safety performance targets under part 673 are consistent with the performance measures set forth in the revised National Safety Plan.

Response: FTA appreciates the commenter's concern regarding the sequencing of publications, including for part 673 and the National Public Transportation Safety Plan (National Safety Plan).[19] FTA's National Safety Plan defines safety performance measures that transit agencies use to set the performance targets required under part 673. FTA has ensured consistency between this final rule and the National Safety Plan, and FTA believes that both updates support the advancement of safety performance measurement by providing transit agencies what they need to set safety performance targets. FTA also understands the concern regarding the importance of consistency across FTA's safety program. FTA will take this into consideration and ensure consistency across parts as it develops its rulemaking for part 674, but due to rulemaking requirements, schedules, and resources, FTA is unable to publish both rulemakings simultaneously.

3. Modal Requirements

Comments: A rail transit agency (RTA) requested greater differentiation among requirements for specific types of rail fixed guideway public transportation systems (RFGPTS), such as streetcar and light rail systems.

Response: FTA appreciates the functional differences among types of RFGPTS and agrees that regulatory requirements should reflect those key differences as appropriate. FTA notes that this regulation is based on the principles of SMS, which are scalable and flexible for public transportation operators of varying types and sizes. FTA therefore disagrees that requirements relating to RFGPTS in this final rule are significantly impacted by the type of RFGPTS in operation.

The National Safety Plan establishes safety performance measures for all modes of transportation. This directly reflects statutory language in 49 U.S.C. 5329(b)(2)(A), which requires FTA to set safety performance criteria in the National Safety Plan by mode. FTA notes that nothing in this final rule or in the National Safety Plan prevents a transit agency from establishing additional safety performance targets with greater specificity than required in the National Safety Plan (*e.g.,* establishing separate safety performance targets for streetcar and light rail systems).

B. Section 673.5—Definitions

1. General

Comments: A few commenters expressed concern with the potential for conflicting definitions across FTA's regulatory framework and associated requirements, with some urging FTA to ensure terms are consistent across FTA's safety regulations and the NTD. Another of these commenters recommended that FTA restate definitions within the rule rather than referencing statutory or regulatory provisions.

Two commenters expressed support for FTA's proposed definitions, with one specifically noting support for the revised definitions of ''small public transportation provider'' and ''assault on a transit worker.''

One commenter stated that changing or deleting definitions would have a significant impact on training materials and expressed concern with the cost of updating these materials.

One commenter expressed concern that the provided definitions lack the specificity required to address safety concerns in ASPs that are manageable and effective. They also stated that any new definitions should be congruent with State and local statutes.

Response: FTA agrees that consistent definitions and requirements are important across its safety program and associated regulatory framework. FTA has taken such consistency into consideration in finalizing this final rule and the National Safety Plan, and will standardize relevant definitions in part 674, the forthcoming Roadway Worker Protection rulemaking, and NTD reporting requirements. In response to the commenter that recommended FTA restate definitions within the rule rather than referencing statutory or regulatory provisions, FTA notes that referencing statutory or other regulatory provisions ensures consistency and avoids conflicts in instances where associated statutes or regulations are revised. In most instances, FTA has chosen to reference statutory or regulatory provisions, except when FTA believes that restating the definition is necessary for clarity, as it has done for the definition of ''assault on a transit worker.''

FTA appreciates the support received regarding the definitions of ''small public transportation provider'' and ''assault on a transit worker.''

FTA acknowledges that, as with any regulatory update, the definitional changes adopted in this final rule may necessitate an update of training materials to address these changes. FTA will aim to provide guidance and other technical assistance regarding the changes adopted in this rule to assist agencies with understanding and adapting to them.

FTA appreciates the commenter's concern regarding the specificity of definitions in this rule and how FTA's definitions may differ from State or local statutes. The definitions introduced here are designed to be sufficiently specific to facilitate compliance without being so restrictive that they interfere with an agency's ability to appropriately scale their SMS to the size and complexity of their transit system. Further, it is not feasible for FTA to accommodate all potential State and local statutory definitions in this rulemaking. FTA therefore declines to make any changes in response to this comment.

2. Accountable Executive

Comments: Three commenters recommended that FTA revise the definition of ''Accountable Executive'' to express that the Accountable Executive has ultimate accountability for and authority over the Agency Safety Plan (ASP), including veto power over anything contained in the ASP. One commenter recommended that FTA specify that the Accountable Executive must have transit mode and safety qualifications.

Response: FTA declines to revise the definition. The Accountable Executive's ultimate accountability for the agency's safety performance, which includes execution of the ASP, is affirmed in § 673.23(d)(1). As explained in Section II.F.5. of this preamble, the rule does not establish Accountable Executive veto power over the contents of the ASP. The Accountable Executive's role is to sign the ASP and to ensure that the ASP and the agency's SMS process is carried out. FTA declines to establish specific qualifications for Accountable Executives because the rule clearly defines the responsibilities of the Accountable Executive. Transit agencies will ultimately define the qualifications

[19] Federal Transit Administration (April 2024). ''National Public Transportation Safety Plan.'' *https://www.transit.dot.gov/nsp.*

required for their Accountable Executive.

3. Assault on a Transit Worker

Comments: Seven commenters expressed concerns about the breadth of the definition of ''assault on a transit worker.'' Two of these commenters requested that FTA narrow the definition to physical assaults. They stated that, by collecting non-violent offenses, FTA could skew the data and make it more difficult for agencies to address these assaults. For this reason, the same commenters recommended FTA limit the definition's applicability to NTD reporting. Another of these commenters stated that, by characterizing verbal abuse as an assault, transit agencies could experience an increase in applications for workers' compensation. One commenter requested clarification and coordination between this definition and the definition of ''non-physical assault'' in the NTD.

One of the commenters requested additional guidance on the definition's use of the terms ''knowingly,'' ''with intent,'' and ''interferes with'' due to concerns about the difficulty of applying these factors in some situations. Similarly, four commenters requested that FTA provide guidance on the types of events that constitute an assault on a transit worker. Two of these commenters recommended that FTA provide examples either in the final rule or in NTD guidance materials. One of these commenters requested that FTA implement a ''grace period'' for NTD assault reporting requirements and PTASP safety risk reduction program performance measures until FTA develops clear guidance on the application of the term. This commenter expressed that the definition is ambiguous and leads to undue administrative burden.

Five commenters stated that the definition of assault used in this rule is not congruent with state criminal statutes, noting that this will create confusion and uncertainty about its application. One of these commenters further questioned why this definition was created when prosecution for assaults on transit workers is generally conducted at a local, not a Federal, level and suggested that these assaults should be tracked by the Transportation Security Administration (TSA) instead. Another commenter suggested that FTA consider using a different word than ''assault'' due to differences with state statutory definitions.

One commenter stated that the definition of assault varies, even within one transit agency, which leads to administrative burden and confusion for an agency's safety, dispatch, and law enforcement personnel. The same commenter stated the incongruity between the rule and the state criminal statutory definition may lead law enforcement to mistakenly direct dispatchers not to report an assault as defined by FTA.

One commenter asked whether assaults on a transit worker should be considered safety or security events.

Response: FTA notes that 49 U.S.C. 5329(d) explicitly uses the term ''assault on a transit worker,'' as defined by 49 U.S.C. 5302, when setting forth certain PTASP requirements. For this reason, FTA is adopting the statutory definition verbatim. The statutory definition does not exclude non-physical assaults, verbal assaults, or non-violent assaults. As such, FTA declines to exclude these events from the definition.

FTA acknowledges that the collection of non-physical assault events may increase the assault on transit worker data that transit agencies collect. FTA notes that the NTD has initiated the collection of non-physical assaults on transit workers data and that this rule utilizes the same definition of assault on a transit worker used by the NTD. This definitional alignment provides important consistency across the PTASP and NTD programs.

FTA appreciates the comments requesting additional guidance from FTA about the definition of ''assault on a transit worker'' and how it should be applied. The NTD program serves as FTA's system for collection of assaults on transit worker reporting requirements. FTA communicates reporting requirements to the NTD reporting community through (1) annual messaging around updates to reporting requirements, (2) regular communications with reporters (both through the system's blast messaging and between the reporter and their assigned validation analyst), (3) an updated FAQ section [20] on the FTA website specific to assaults on transit workers, and (4) updates to guidance and training. The NTD program has developed several training opportunities and guidance materials to help agencies address the new assaults on transit worker reporting requirements. The 2023 NTD Safety and Security Reporting Policy Manual [21] provides detailed guidance about safety and security reporting, including assaults on transit workers. In addition, the 2023 Safety and Security Quick Reference Guide: Rail Modes [22] and Safety and Security Quick Reference Guide: Non-Rail Modes [23] define reportable events and identify reporting thresholds. A webinar on 2023 Safety & Security Updates: Reporting Assaults on Transit Workers,[24] was provided to the public on April 27, 2023, and is available for viewing online. Finally, there are several courses offered by the National Transit Institute pertaining to 2023 safety reporting for full reporters (rail [25] and non-rail [26]) as well as reduced reporters.[27]

FTA disagrees that a ''grace period'' for safety risk reduction program performance measures and reporting assaults on transit workers to the NTD is necessary and notes that the NTD has already begun collecting data on assaults on transit workers from the transit industry.

Regarding concerns about inconsistencies with the State law definitions of ''assault,'' FTA's proposed definition of ''assault on a transit worker'' is the same as the Federal statutory definition at 49 U.S.C. 5302. Although this definition potentially differs from State law and from transit agency definitions, FTA is adopting this definition to ensure the definition used for the purposes of this rule is consistent with the statute.

FTA appreciates that some transit agencies treat assault on a transit worker as both a safety and a security event. Congress directed FTA to address assaults on transit workers through both the NTD and FTA's safety program as part of FTA's work to improve safety at transit systems across the country. This final rule carries out the Congressional

[20] Federal Transit Administration (October 2023). ''Recent NTD Developments—Frequently Asked Questions.'' *https://www.transit.dot.gov/ntd/recent-ntd-developments-frequently-asked-questions.*

[21] Federal Transit Administration (August 2023). ''2023 NTD Safety and Security Reporting Policy Manual.'' *https://www.transit.dot.gov/ntd/2023-ntd-safety-and-security-reporting-policy-manual.*

[22] Federal Transit Administration (August 2023). ''Safety & Security Quick Reference Guide: Rail Modes.'' *https://www.transit.dot.gov/ntd/safety-security-quick-reference-guides.*

[23] Federal Transit Administration (August 2023). ''Safety & Security Quick Reference Guide: Non-Rail Modes.'' *https://www.transit.dot.gov/ntd/safety-security-quick-reference-guide-non-rail-modes.*

[24] National Transit Institute (April 2023). ''Webinar: NTD Safety Reporting Requirements Update: Assaults on Transit Workers.'' *https://www.youtube.com/watch?v=GeB3RXCl6oQ.*

[25] National Transit Institute. ''National Transit Database: Urban Safety & Security Reporting Rail Modes.'' *https://www.ntionline.com/national-transit-database-urban-safety-security-rail/.*

[26] National Transit Institute. ''National Transit Database: Urban Safety & Security Reporting Non-Rail Modes.'' *https://www.ntionline.com/national-transit-database-urban-safety-and-security-reporting-non-rail-modes/.*

[27] National Transit Institute. ''National Transit Database: Rural NTD Reporting.'' *https://www.ntionline.com/rural-ntd-reporting/.*

mandate to address assaults on transit workers through the PTASP regulation.

FTA is adopting this definition as proposed.

4. Chief Safety Officer

Comments: One commenter requested that FTA revise the definition of ''Chief Safety Officer'' to remove the phrase ''adequately trained individual'' and instead require the Chief Safety Officer have transit modal and safety competencies, credentials, training, and experience.

Response: FTA declines to revise the definition and does not have discretion to remove the requirement for the Chief Safety Officer to be ''adequately trained,'' as it is required by statute at 49 U.S.C. 5329(d)(1)(G). FTA believes that the transit agency is the entity best situated to define adequate training. For operators of RFGPTS, the relevant SSOA may establish additional training requirements.

5. Emergency

Comments: Two commenters disagreed with the proposed definition of ''emergency'' and expressed concern that the definition may lead to confusion because the term ''emergency'' is commonly used to include incidents outside the scope of the proposed definition (*e.g.,* medical emergencies). One of these commenters noted that FTA's proposed definition is similar to an ''Act of God'' and recommended that if this is the intent, FTA should utilize the Federal Emergency Management Agency (FEMA) definition of ''emergency.''

Response: FTA agrees that the term ''emergency'' may have definitions other than the one presented in the NPRM. The definition used in the NPRM mirrors the statutory definition in 49 U.S.C. 5324 and its use in this final rule synchronizes definitions within FTA's programs. Further, FTA believes this definition is appropriate for purposes of establishing the minimum required scope of the emergency preparedness and response plan or procedures required in § 673.11(a)(6)(i). FTA notes that transit agencies are free to develop emergency preparedness and response plans or procedures that cover a broader set of situations.

6. Equivalent Entity

Comments: One commenter requested more information about the use of the term ''equivalent entity'' and how it relates to the term ''Equivalent Authority.''

Response: The term ''equivalent entity'' is used in this final regulation as a one-to-one replacement for the term ''Equivalent Authority.'' FTA made this change to conform with the statutory term used in 49 U.S.C. 5329(d)(1)(A). FTA does not intend this change to be substantive.

7. Hazard

Comments: One commenter requested clarification on the difference between a safety hazard and a hazard.

Response: FTA uses these two terms interchangeably. There is no substantive difference between FTA's use of these terms. For clarity, FTA has revised the rule to use ''hazard'' in place of ''safety hazard.''

8. Investigation

Comments: One transit agency stated that the definition of ''investigation'' implies that an investigation would only occur after a safety event has occurred and asked whether the definition also includes near-miss or close-call incidents. Further, the commenter recommended an alternative definition that includes near-misses and that states that investigations may serve the purpose of preventing the occurrence of potential consequences, rather than merely their recurrence.

Response: In both the NPRM and this final rule, FTA includes both hazards and safety events in its definition of ''investigation.'' The definition does not exclude investigations of hazards that may have resulted in a near-miss.

9. Joint Labor-Management Process

Comments: One commenter suggested that FTA should revise the definition of ''joint labor-management process'' to mean the formal approach for conducting the responsibilities of the Safety Committee established under 49 U.S.C. 5329(d). Another commenter opposed defining this term as a process to ''discuss topics,'' stating that establishing a Safety Committee consists of more than just discussion. In addition, this commenter requested that FTA include a requirement for workers and management to make democratic decisions and for agencies to incorporate the committee's structure and rules into ASPs.

Response: The term ''joint labor-management process'' is used only in § 673.19(a), which sets forth the responsibilities for a Safety Committee established in 49 U.S.C. 5329. Because of this limited usage, FTA does not believe it is necessary to further address the Safety Committee in the definition of ''joint labor-management process.'' FTA agrees with the commenter that establishing and operating a Safety Committee consists of more than just discussion. FTA does not believe the definition of ''joint labor-management process'' limits the role of the Safety Committee. FTA notes that § 673.19 defines the Safety Committee requirements and responsibilities, including requirements directly related to establishment, membership, procedures, and ASP approval. Further, FTA specifically addresses Safety Committee decision-making at § 673.19(c)(6). FTA refers readers to section II.F. of this preamble below for additional discussion about Safety Committee procedures and decision-making. As such, FTA declines to revise the definition of ''joint labor-management process.''

10. Near-Miss

Comments: Two commenters stated that FTA should not use the word ''narrowly'' in its definition of ''near-miss,'' as each transit agency may interpret that word differently. One commenter also noted that transit agencies typically define ''near-miss'' differently in the bus and rail contexts and requested that the definition clarify this. Four commenters provided alternative language for inclusion in the definition to narrow its scope, expressing concern that FTA's language is too broad and does not align with how some transit agencies categorize near-miss incidents. One commenter requested that FTA either clarify the types of narrowly avoided safety events captured in the definition of ''near-miss'' or alternatively, delete the definition. Another commenter recommended FTA ensure ''near-miss'' is defined the same way in State Safety Oversight (SSO) Program guidance so that all SSOAs interpret the term consistently.

Response: FTA appreciates the comments regarding the definition of ''near-miss'' and has thoroughly considered each suggestion. FTA acknowledges that transit agencies may interpret the word ''narrowly'' differently. However, FTA disagrees that defining or removing ''narrowly'' from the definition of ''near-miss'' is appropriate. FTA believes that it is important to give transit agencies flexibility to have different definitions of ''narrowly'' as it pertains to near-misses depending on the kind of narrowly avoided event. For example, an agency may decide that ''narrowly'' has a broader definition when identifying near-misses between transit vehicles and pedestrians than it does when identifying low-speed transit vehicle to transit vehicle collision-related near-misses in the yard.

FTA disagrees that the definition of ''near-miss'' is insufficient. Any safety

event, also defined in this rule, that is narrowly avoided is considered a ''near-miss'' under this definition. FTA acknowledges the comments recommending that FTA narrow the scope of the ''near-miss'' definition because it does not align with how some commenters currently categorize near-miss incidents or because it does not sufficiently distinguish application within rail and bus operating environments. FTA does not believe it should revise the definition to narrow the scope or specify mode-specific applications. As noted previously, the term as defined in the final rule offers transit agencies flexibility. As written, transit agencies have the flexibility to apply the definition based on their operating environments.

Further, FTA notes that the term ''near-miss'' is used only at § 673.23(b) where FTA identifies types of safety concerns that workers should be able to report through a transit worker safety reporting program. FTA disagrees with revising the definition, as it may limit the concerns that transit workers report through a transit worker safety reporting program. FTA may consider providing examples through technical assistance. While application of the term may vary across transit applications, FTA believes the term as defined is valid and useful.

Finally, FTA appreciates the comment recommending consistency with SSO Program guidance. FTA will consider this recommendation when finalizing 49 CFR part 674.

11. Performance Target/Safety Performance Target

Comment: An SSOA commenter requested that FTA clarify the difference between ''performance target'' and ''safety performance target'' and questioned whether both definitions are necessary. This commenter also requested that, for clarity, FTA revise the definition of ''safety performance target'' to combine elements of both definitions.

Response: FTA agrees with the commenter and has deleted the definition of ''performance target'' and revised the definition of ''safety performance target'' to combine elements of both definitions.

12. Potential Consequence

Comments: Two commenters requested additional language clarifying the definition of ''potential consequence.''

Another commenter expressed confusion about the word ''potential'' and asked for clarification as to whether the definition refers to outcomes.

Response: FTA appreciates the request for additional language but believes that the term ''potential consequence'' is sufficient as defined in this rule as the effect (or outcome) of a hazard. FTA will consider technical assistance in the future on this subject.

13. Rail Fixed Guideway Public Transportation Systems

Comment: One commenter expressed concern that the definition of ''Rail Fixed Guideway Public Transportation System'' conflicts with the definition of ''fixed guideway'' in 49 U.S.C. 5302. The commenter requested that FTA add a definition of ''fixed guideway'' that includes bus rapid transit and people mover systems, and asked FTA to clarify whether overhead fixed catenary and passenger ferry systems are covered by the definition.

Response: The definition of ''Rail Fixed Guideway Public Transportation System'' is explicitly limited to fixed guideway systems that use rail and are under the jurisdiction of an SSOA (see 49 U.S.C. 5329(e)). The only revision that FTA proposed to this definition was to clarify existing language regarding systems in engineering or construction. This is a non-substantive revision that does not change applicability. Further, the addition of the term ''public transportation'' to § 673.5 does not change the applicability of the term ''rail fixed guideway public transportation system.''

Because the definition of ''Rail Fixed Guideway Public Transportation System'' is limited to rail, FTA believes it is not necessary to clarify that passenger ferry systems and other non-rail modes are excluded from the definition. The definition does not conflict with the definition of ''fixed guideway'' in 49 U.S.C. 5302. Therefore, FTA declines to add a definition of ''fixed guideway'' that includes bus rapid transit and people mover systems.

14. Roadway

Comments: Four commenters stated that the definition of ''roadway'' could be confusing, with one noting that the definition obstructs the meaning of roadway worker protections for systems with shared rights-of-way. Two of these commenters recommended that FTA use the term ''right-of-way'' to refer to the area rail tracks occupy. Commenters noted that ''roadway'' is commonly understood to mean asphalt paved surfaces for rubber tire vehicles. A separate commenter recommended that FTA include definitions for both the terms ''roadway'' and ''right-of-way'' in the definitions section of the regulation.

One of these commenters stated the definition was too narrow and conflicted with other definitions for the term ''roadway'' such as the one used in Federal Highway Administration's Manual on Uniform Traffic Control Devices.

One commenter requested clarification regarding whether the term includes busways that operate on their own right-of-way. The same commenter also asked whether this term included RTA maintenance facilities through which trains can move.

Response: FTA appreciates the stated concerns regarding the term ''roadway'' and notes that this is the term used in the Federal Railroad Administration's regulations and guidance. For consistency across passenger rail operations, FTA has determined that it is best to define and use this term similarly. It therefore declines to use a different term such as ''right-of-way.''

The term defined in this final rule means any land on which rail transit tracks and support infrastructure have been constructed, excluding station platforms. This means that ''roadway'' includes rail transit tracks and support infrastructure used in revenue service and rail transit tracks and support infrastructure used in non-revenue service, such as yards and sidings. In this final rule, the term is only used in the rail context. As such, FTA declines to use the definition of ''roadway'' found in the Manual on Uniform Traffic Control Devices [28] and does not include busways in the final rule's definition of ''roadway.''

15. Safety Event

Comments: Seventeen commenters, including transit agencies, SSOAs, and transit industry associations, expressed concern regarding FTA's proposal to replace the terms ''accident,'' ''incident,'' ''occurrence,'' ''event,'' and ''serious injury'' with the term ''safety event.'' Commenters noted that all these terms have wide-ranging impacts and unique definitions across various programs, including drug testing thresholds, NTD reporting, accident investigation thresholds, and safety training programs.

Several commenters explicitly opposed the proposal. Four commenters stated that the definition is overly broad and should be more narrowly defined. One of these commenters expressed that the definition of ''safety event'' creates too broad of a scope for the safety risk

[28] Federal Highway Administration (July 2022). ''Manual on Uniform Traffic Control Devices for Streets and Highways.'' *https://mutcd.fhwa.dot.gov/pdfs/2009r1r2r3/pdf_index.htm.*

reduction program and would result in differing interpretations of that program.

Four commenters were SSOAs that stated removal of those terms would change the threshold for investigation and require investigations into an overly broad set of circumstances. One of these commenters expressed particular concern that the change would result in investigations of ''damage to the environment.'' Another of these commenters expressed that creating a generalized ''safety event'' category is confusing, and that FTA should consider the downstream effects of this change on SSO programs that rely on previous definitions. A participant at an FTA webinar asked whether this proposal would impact the accident investigation and SSOA reportable event thresholds. One RTA commenter requested clarification of what transit agencies will be expected to report within two hours.

Twelve commenters expressed concern that the proposed definition would cause inconsistency with the current definitions in 49 CFR part 674 and the NTD. One of these commenters requested clarification as to whether the new definition would change the NTD reporting requirements and FTA's severity determinations.

Some noted that this proposal creates a different investigation threshold for rail transit systems subject to part 674, and bus systems that are not subject to that regulation. One commenter asked whether the change implies that FTA intends to incorporate bus modes into part 674, or whether FTA will make a similar change to part 674 for rail modes. This commenter questioned what improvements these changes would achieve. Several commenters recommended that, if FTA adopts the proposal, it should establish consistent definitions and thresholds across FTA's programs.

Some commenters requested changes to FTA's proposed definition of ''safety event.'' One SSOA commenter suggested FTA include the phrase ''assault on a transit worker'' in its definition to ensure that such assaults require investigation. One commenter requested that FTA replace the word ''unexpected'' with ''undesired.'' Another commentor recommended FTA remove the word ''unexpected'' and replace ''outcome'' with ''incident'' in the definition. This commenter noted that injury and death are expected outcomes of certain incidents, such as subway surfing.

One transit agency supported the proposal but recommended that FTA restrict SSOAs from developing their own definitions for ''injury'' and ''serious injury.''

Response: FTA appreciates the stated concerns but disagrees that the term ''safety event'' is inappropriately broad for this rule. Further, while the July 2018 PTASP rule included definitions for these terms, neither that rule nor this final rule use the terms ''accident,'' ''incident,'' or ''occurrence'' as key terms in the rule. FTA notes that the definition provided in part 673 is intended to be general in nature and is not intended to define concrete thresholds for notification, reporting, or investigation. Rather, the definition of ''safety event'' allows FTA to identify the types of events that a transit agency's SMS should address. FTA, therefore, is adopting the definition of ''safety event'' in this rule as proposed in the NPRM.

Further, FTA does not believe that the definition results in an overly broad scope for the safety risk reduction program. The definition of ''safety event'' in this final rule does not define the safety performance measures required for the safety risk reduction program. Rather, FTA defines specific safety performance measures for the purposes of the safety performance target setting requirements of §§ 673.11(a)(3) and 673.11(a)(7)(iii) through the National Safety Plan. This includes the safety performance measures required of all transit agencies and the safety performance measures required for large urbanized area providers for the safety risk reduction program. This final rule does not define those safety performance measures.

FTA appreciates the comments from the four SSOAs that expressed concern that the removal of the terms ''accident,'' ''incident,'' ''occurrence,'' and ''serious injury'' from part 673 could impact the SSOA investigation thresholds by requiring investigation of an overly broad set of circumstances, including damage to the environment. Further, FTA appreciates SSOA commenters urging consideration of the downstream impacts of such changes. FTA has thoroughly reviewed the effects of the changes issued through this final rule and confirms that the definition of ''safety event'' does not change any SSOA investigation requirement established by part 674.

FTA notes that part 673 does not establish a two-hour notification requirement. The existing two-hour notification requirement referenced by the commenter is established by part 674, and any changes to that requirement would be executed through a rulemaking amending part 674.

FTA also appreciates the commenters that expressed concern that the proposed definition of ''safety event,'' coupled with the removal of the terms ''accident,'' ''incident,'' ''occurrence,'' and ''serious injury,'' could cause inconsistency with the current definitions in part 674 and the NTD. FTA again notes that the removal of these definitions from part 673 does not change any existing SSO Program investigation threshold or requirement established in part 674 or any existing NTD reporting requirements, nor do these changes conflict with either program.

FTA acknowledges and agrees with commenters who recommended FTA should establish consistent definitions across FTA's programs, including in the bus and rail contexts. FTA continues to ensure synchronization of definitions across programs where appropriate to support the use of thresholds to trigger specific program activity.

FTA carefully considered commenters' suggested changes to the definition of ''safety event,'' including the recommendation to add the phrase ''assault on a transit worker'' to ensure that such assaults require investigation. FTA again notes that the ''safety event'' definition provided in part 673 is intended to be general in nature and is not intended to define concrete thresholds for notification, reporting, or investigation. FTA also considered the suggestions to replace the word ''unexpected'' with ''undesired'' and to remove the word ''unexpected.'' FTA declines to make either of these suggested revisions as the word ''unexpected'' is used to distinguish planned outcomes from unexpected outcomes. FTA appreciates the commenter's example of subway surfing but believes that subway surfing is an unexpected outcome. While injuries and fatalities are likely to result from these events, the safety event itself is unexpected. FTA also considered the suggestion to replace ''outcome'' with ''incident,'' but declines to adopt this change. The addition of the term ''incident'' may cause confusion based on its previous definition within part 673 and its current definition within part 674.

FTA acknowledges the comment from an RTA recommending that FTA restrict SSOAs from developing their own definitions for ''injury'' and ''serious injury.'' FTA notes again that this final rule does not impact any existing SSOA investigation requirements established in part 674. Further, part 673 would not be the appropriate rule to establish any SSO Program notification or investigation-related requirement.

16. Safety Management System

Comments: Six commenters requested that FTA not adopt its proposed revision to the definition of ''Safety Management System.'' Specifically, all these commenters opposed FTA's proposed deletion of the word ''top-down.'' Commenters expressed that ''top-down'' is a foundational component of SMS that is important for improving safety, and that this word reflects the Accountable Executive's key role in promoting and implementing SMS from the very top of an organization. Two commenters also noted that this concept is included in Transportation Safety Institute (TSI) courses. One commenter asked FTA to provide its rationale for this deletion and expressed that the change will negatively impact training materials and management accountability.

Response: FTA appreciates the stated concerns related to the change in definition. Removing the term ''top-down'' does not change any of the authorities, accountabilities, and responsibilities of the Accountable Executive, Chief Safety Officer or SMS Executive, or agency leadership. FTA notes that removal of this term is intended to reflect the multi-directional flow of information, which is intrinsic to the function of an SMS. Transit worker safety reporting program and Safety Committees are examples of multi-directional information flow throughout the agency. FTA notes that this change does not conflict with or modify the related concepts covered in existing TSI courses. FTA acknowledges that changes in definitions may require revision to existing training materials that may have referenced the previous definition but notes that this definitional change does not impact management accountability.

This final rule removes the term ''top-down'' from the definition, as proposed.

17. Safety Risk

Comments: FTA received two comments on its proposed revision to the definition of ''safety risk.'' One commenter stated that the terms ''predicted severity'' and ''potential consequence'' in the definition are synonymous. This commenter suggested an alternative definition for FTA's consideration. Another commenter stated the proposed definition conflicts with the one used in the TSI training materials.

Response: FTA disagrees that these two terms are synonymous. A ''potential consequence'' is an effect or outcome, whereas ''predicted severity'' is a measure of how bad a potential consequence could be as predicted by the transit agency through safety risk assessment. Further, as discussed earlier, FTA acknowledges that changes in definitions may require revision to existing training materials that reference a now outdated definition. FTA has adopted the definition as proposed.

18. Safety Risk Mitigation

Comments: Two commenters requested that FTA clarify the difference between safety mitigation and safety risk mitigation. Another commenter stated the proposed definition conflicts with the one used in the TSI training materials.

Response: FTA did not intend for any substantive difference between the two terms. For clarity, FTA has replaced instances of ''safety mitigation'' in this final rule with ''safety risk mitigation.'' Again, FTA acknowledges that changes in definitions may require revision to existing training materials that reference a now outdated definition but notes that this is not a substantive change.

19. Transit Worker

Comments: Two commenters expressed concern that the definition of ''transit worker,'' in conjunction with the statutorily defined term ''assault on a transit worker,'' will require transit agencies to address more than just assaults on transit operators. They recommended that FTA either redefine ''transit worker'' or add a definition of ''frontline transit worker'' to narrow the scope of individuals covered by the ''assault on a transit worker'' requirements. These commenters expressed that FTA's proposed definition obscures data collection and mitigation efforts for operator assaults.

One commenter inquired whether the term ''transit worker'' includes a transit agency's administrative staff. Another commenter requested clarification of the term's applicability to short-term contract workers, such as individuals hired to distribute surveys or wayfinding support for a weekend shutdown.

Response: FTA confirms that the definition of ''transit worker'' is intended to be broader than just vehicle operators. The statutory definition of ''assault on a transit worker'' in 49 U.S.C. 5302 and the related requirements in 49 U.S.C. 5329(d) are not explicitly limited to transit operators. FTA therefore understands this term to be broad and include more job descriptions than just ''operator'' or ''frontline transit worker.'' FTA also notes that the definition adopted in this final rule is the same as the NTD definition, which provides important consistency across programs. The term ''transit worker'' does not exclude a transit agency's administrative staff. Further, FTA confirms that the term includes short-term contract workers. FTA adopts the definition as proposed.

20. Additional Definitions

Comments: Several commenters requested that FTA define additional terms used in the regulation and provided several terms for definition, with one commenter requesting that FTA define all relevant and subjective terms. This commenter recommended defining many common terms that are used in the rule text, such as ''appropriately,'' ''elements,'' ''ineffective,'' and ''results.''

One commenter urged FTA to define the term ''plurality'' in § 673.5 to clarify the Safety Committee formation requirements. The commenter expressed that the definition should communicate that when multiple labor organizations represent a transit system's frontline workers, the union with the largest membership chooses the frontline transit worker representatives for the Safety Committee. This definition would also clarify that when an agency has a single union, the union chooses the frontline transit worker representatives regardless of the size of the agency's unrepresented workforce.

One commenter recommended FTA include a definition for ''frontline transit worker.'' One commenter requested FTA define the term ''State Safety Oversight Program'' and provided a suggested definition that included specific SSO Program requirements and a citation to 49 U.S.C. 5329(e)(3).

Several commenters, including transit agencies and an SSOA, stated that the removal of the term ''serious injury'' left transit agencies without a definition for ''injury,'' and two of these commenters expressed concern with the lack of an ''injury'' definition related to required safety performance measures.

Response: FTA agrees that this final rule should define all relevant terms but disagrees with including definitions for all suggestions made by commenters. In this rule, FTA balanced the need for distinct definitions for key terms with the need for flexibility inherent in an SMS environment.

FTA does not believe it is necessary to define commonly understood terms in the rule. For example, the terms ''appropriately,'' ''elements,'' ''ineffective,'' and ''results,'' among others suggested by commenters, do not need definitions to ensure understanding of the rule. Similarly, FTA does not believe it is necessary to define the term ''plurality'' in § 673.5 as

the commonly understood definition would apply. Further, FTA has addressed the elements of the ''plurality'' definition suggested by the commenter through the Safety Committee requirements established in § 673.19(b). FTA confirms that for transit agencies with multiple labor organizations, ''plurality'' refers to the labor organization that represents the largest number of the agency's frontline workforce. For transit agencies with only one labor organization, that single labor organization chooses frontline transit worker representatives for the Safety Committee regardless of the size of the agency's unrepresented workforce.

FTA appreciates the comment suggesting that FTA define ''frontline transit worker'' in the rule. However, FTA declines to establish a specific definition for this term, to preserve flexibility for transit agencies to apply this term based on their organizational and operating realities. Frontline transit worker roles and functions may vary across different transit agencies.

FTA also considered the recommendation to define ''State Safety Oversight Program'' in the rule. FTA disagrees that this term should be defined in this rule. FTA notes that the SSO Program requirements stated in the commenter's suggested definition are explicitly stated in 49 CFR part 674. FTA does not believe it is necessary to repeat them in part 673.

FTA proposed removing the term ''serious injury'' from the rule in response to industry feedback stating that the criteria established under that definition were difficult to apply and led to confusion, rather than clarity. This change is intended to simplify the classification of safety events, and FTA will adopt the removal of this term as proposed. However, FTA agrees with the commenter that recommended FTA add a definition of ''injury'' to the rule. This term is used in the regulation in the context of the safety risk reduction program, so FTA believes that adding a definition provides necessary clarity.

FTA's National Safety Plan, which establishes safety performance measures for the transit industry, directs users to the NTD for the definition of ''injury.'' In response to comments, and for consistency across programs, FTA has added the same definition of ''injury'' used by the NTD to this final rule.

C. Section 673.11—Agency Safety Plans

1. General

Comments: One commenter requested that FTA provide additional guidance on developing ASPs to allow transit agencies and contractors to modify contracts to address necessary ASP changes. Two commenters urged FTA to consider how the proposed changes to the PTASP regulation would impact transit agencies with contracted transit services.

Two commenters requested that FTA define timelines or milestones related to RTA SMS implementation to support SSOA oversight of RTAs. One of these commenters expressed that additional requirements from FTA and SSOAs make SMS more complex and less scalable.

One commenter stated that FTA should require transit agencies to include their Safety Management Policy statement in their ASP along with processes for workers to report safety concerns. The commenter noted that inclusion is necessary to ensure that the Safety Committee reviews and approves these processes.

Response: FTA will consider expanding its existing technical assistance regarding ASP development, distribution of the Safety Management Policy statement, and SMS implementation. FTA notes that PTASP requirements, including any changes adopted in this final rule, apply to transit providers that directly operate service as well as those that use contractors to provide transit service. FTA took this into consideration when developing the final rule.

FTA acknowledges the commenters that recommended FTA establish timeline or milestone requirements for RTA SMS implementation to support SSOA oversight activity. Further, FTA acknowledges the related concern that additional requirements may make the PTASP regulation less flexible and less scalable. In response, FTA notes that most revisions adopted in this final rule implement statutory changes. Further, FTA believes that establishing additional SMS implementation milestone requirements for RTAs would limit the flexibility and scalability of SMS. FTA notes that SSOAs may establish additional safety requirements for the RTAs they oversee.

In response to the commenter that requested FTA require agencies to incorporate the Safety Management Policy statement into their ASP, FTA notes that in § 673.23(a), FTA establishes requirements for the Safety Management Policy component of a transit agency's SMS and includes the requirement for an agency to have a written Safety Management Policy statement. Based on this existing requirement, FTA expects a transit agency to include or incorporate by reference a Safety Management Policy statement in its ASP, as well as the processes for transit workers to report safety concerns. FTA notes that any documents incorporated by reference in the ASP that are used to address PTASP regulation requirements are part of the Safety Committee's review and approval process. FTA declines to make changes to the regulatory text in response to these comments.

2. ASP Updates

Comments: FTA received several comments about the annual ASP review and approval requirement set forth in § 673.11(a)(5). One commenter noted that FTA should establish an annual ASP approval deadline that does not coincide with fall and winter holidays, noting that the initial December 31 compliance date for Safety Committee approval of ASPs was difficult to meet.

Three commenters asked whether a transit agency must follow the review, signature, and approval process outlined in § 673.11(a)(1) if the only change the agency made to the ASP was to update its safety performance targets (SPTs). Two commenters requested FTA issue guidance classifying SPT revisions as non-material substantive changes that are not required to undergo the § 673.11(a)(1) approval process.

Response: FTA appreciates the comment regarding establishing an annual ASP approval deadline that does not coincide with the fall and winter holiday season. FTA notes that it established one-time compliance dates of July 31, 2022, and December 31, 2022, to address certain Bipartisan Infrastructure Law PTASP requirements.[29] FTA is not establishing any such fixed deadlines in this final rule. Instead, the PTASP regulation requires transit agencies to review and update their ASPs annually to address needed changes, such as regulatory changes. FTA expects transit agencies to address the regulatory changes adopted in this final rule in their next ASP update based on their existing ASP update process documented in their ASP.

Transit agencies that update the SPTs in their ASP must follow the review, signature, and approval process outlined in § 673.11(a)(1). This follows existing practice under the PTASP regulation. FTA notes that changes to SPTs may have a direct impact on transit agency activity. This is especially true with respect to the SPTs set as part

[29] Federal Transit Administration (February 17, 2022). ''Dear Colleague Letter: Bipartisan Infrastructure Law Changes to PTASP Requirements.'' *https://www.transit.dot.gov/safety/public-transportation-agency-safety-program/dear-colleague-letter-bipartisan-infrastructure.*

of the safety risk reduction program of large urbanized area providers. However, FTA notes that agencies and their Safety Committees may leverage different approval processes based on the types of changes being proposed, as long as the process results in the approval by the Safety Committee (for large urbanized area providers), approval by the agency's Board of Directors or equivalent entity, signature from the Accountable Executive, and approval by the SSOA (for RTAs). This means that a transit agency and its Safety Committee, as applicable, could use a more streamlined review and approval process for its ASP if the only changes to the document are SPT revisions, as long as the process results in the required approvals and signature. FTA does not believe additional regulatory text is necessary.

3. Roadway Workers

Comments: An RTA commenter opposed language proposed at § 673.11(a)(6)(ii), which would require RTAs to include or incorporate by reference in their ASPs any policies and procedures regarding rail transit workers on the roadway the RTA has issued. This commenter stated that FTA should remove this paragraph and incorporate it into FTA's forthcoming Roadway Worker Protection rulemaking instead.

Response: FTA appreciates the comment regarding § 673.11(a)(6)(ii). FTA notes that the regulatory language does not establish any new requirements for roadway worker protection. The additional language only requires transit agencies to include or incorporate by reference in their ASP any such policies or procedures issued by the transit agency. FTA does not believe that this requirement related to ASP documentation would conflict with any future regulation that may establish roadway worker requirements.

4. State Safety Oversight

Comments: FTA received several comments regarding proposed § 673.11(a)(6)(iii), which would require RTAs to include or incorporate by reference the policies and procedures developed in consultation with SSOAs regarding the SSOA's risk-based inspection program. Two commenters stated that RTAs and SSOAs should establish a working group to develop the SSOA's risk-based inspection program and to establish language for the ASP regarding physical and digital access to the RTA.

One commenter requested FTA clarify what consultation RTAs are required to have with SSOAs for purposes of this requirement. One commenter asked FTA to clarify that the SSOA develops the risk-based inspection program policies and procedures, and that the RTAs must comply with the SSOA's certified program. This commenter noted that per 49 U.S.C. 5329(k), the RTA must include the SSOA's policies and procedures in its ASP.

Another commenter recommended that FTA specify that RTAs do not need to comply with § 673.11(a)(6)(iii) until the SSOA's risk-based inspection program is in place. They also requested that FTA change the language in this paragraph from ''provide access and required data'' to ''provide access to required data.''

One commenter observed that the NPRM did not address requirements and processes for RTAs to ensure that their ASP is approved by their SSOA.

In addition, FTA received a few comments regarding FTA's SSO Program set forth in 49 CFR part 674.

Response: FTA agrees that SSOAs and RTAs may benefit from working together as appropriate on the SSOA's risk-based inspection program. This final rule does not establish any new requirements for an SSOA's risk-based inspection program. Instead, this final rule requires RTAs to document or incorporate by reference in the ASP the processes they use to address any risk-based inspection program requirements established by their SSOA. As such, FTA believes that it is inappropriate to establish additional requirements or clarifications specific to SSOA risk-based inspection programs in this final rule. Similarly, FTA declines to establish a distinct timeline in this final rule for RTA ASPs to incorporate language relating to their SSOA's risk-based inspection program.

Further, FTA disagrees with the commenter's suggested language change regarding access. Through a risk-based inspection program, SSOAs will perform inspections at transit agencies based on safety risk. An SSOA needs data access to support risk determinations and inspection prioritization and needs physical access to conduct inspections. Accordingly, this final rule does not change the language proposed in the NPRM.

The Federal requirement for SSOAs to approve the ASPs for RTAs under their jurisdiction is established through § 673.13(a) and part 674. As described in part 674, the SSOA is responsible for establishing timelines relating to SSOA approval of RTA ASPs. FTA believes that this function should remain with the SSOA to permit the oversight entity to set an appropriate timeline. Example timelines are publicly available through FTA's PTASP Technical Assistance Center.

Regarding the comments relating to FTA's SSO program, FTA thanks commenters for these suggestions and will take them into consideration. However, FTA notes that they are outside the scope of the PTASP NPRM and therefore declines to address them in this final rule.

5. Safety Performance Targets

Comments: For comments specific to the safety performance targets in the safety risk reduction program, see section II.G of this preamble. The National Safety Plan includes additional information on the safety performance measures used to address the statutory requirements of the safety risk reduction program.

Two commenters requested that FTA permit transit agencies to set percentage-based safety performance targets.

Response: As defined in the National Safety Plan, transit agencies must set safety performance targets for the safety risk reduction program by number and rate. Transit agencies may calculate the change their agency wants to make using whole numbers or percentages. For example, a transit agency could set a safety performance target for injuries by defining a reduction of two injuries over an established time period or by defining a 20 percent reduction over an established time period.

D. Section 673.13—Certification of Compliance

1. General

Comments: Two commenters requested clarification on the requirement for direct recipients to annually certify that they and all applicable subrecipients are in compliance with PTASP requirements. They stated that this requires States, who may perform the role of a direct recipient for certain transit agency subrecipients, to assume ongoing compliance oversight. These commenters argued that this is a change in practice and that a State currently is responsible for drafting the ASP for small public transportation providers but is not responsible for providing ongoing oversight of those ASPs.

Response: This rule does not establish any changes to the existing annual certifications and assurances process used by States and transit agencies to certify compliance with part 673. To the extent that a State acts as a section 5307 direct recipient for certain transit agency subrecipients who must comply with the PTASP regulation, the State

must annually certify to its compliance and the compliance of any applicable subrecipients with PTASP requirements. This is the same process used by FTA for all rules and associated compliance requirements.

2. Compliance Enforcement

Comments: FTA received several comments, including from certain members of Congress, international labor organizations, and local unions, stating that FTA needs a process to monitor and enforce compliance with the PTASP requirements. Several of these commenters expressed concern about FTA's oversight of the Bipartisan Infrastructure Law Safety Committee requirements, with three of them noting that they estimate approximately 50 transit agencies were out of compliance at the time the comments were submitted. A few commenters also provided specific allegations of PTASP noncompliance. Commenters expressed concern that, without an established process for FTA to enforce the requirements of the rule, transit agency management may see the Safety Committee as a mere ''check the box'' exercise and not fully implement or utilize the expertise of the Safety Committee.

Three commenters urged FTA to establish a formal mechanism to receive claims of PTASP noncompliance, investigate such claims, and issue related findings and penalties. In addition, the Amalgamated Transit Union in a March 26, 2024, Executive Order 12866 review meeting suggested that FTA provide specific notice of noncompliance with PTASP prior to withholding FTA capital funds. One also urged FTA to require transit agencies to submit their ASPs to FTA for a compliance review.

In addition, another commenter suggested that FTA require transit agencies to submit an ASP signature page as part of its annual PTASP certification under § 673.13. This signature page would state that the ASP was approved and would be signed by the Safety Committee's lead union representative and lead management representative.

Some commenters stated that FTA should take enforcement action against noncompliant agencies, including withholding Federal funds. Relatedly, one commenter urged that compliance with the PTASP regulation should be tied to Federal funding eligibility.

Response: FTA requires applicable recipients to certify that they have established an ASP that meets the requirements of the PTASP regulation and 49 U.S.C. 5329(d) as part of the annual Certifications and Assurances for FTA grants and cooperative agreements. FTA notes that per 49 U.S.C. 5307(c)(1)(L), this certification is a required condition of receiving section 5307 funding. FTA monitors these certifications in its Transit Award Management System (TrAMS) and assesses compliance with the PTASP regulation through its existing triennial review process. Agencies that are found to have incorrectly or falsely certified compliance with the requirements are subject to appropriate enforcement actions. FTA investigates specific allegations of noncompliance. FTA is authorized through 49 U.S.C. 5329(g) to take enforcement action against a recipient that does not comply with Federal law with respect to the safety of the public transportation system. This includes requiring the use or withholding of funds under 49 U.S.C. 5329(g)(1)(D) and (E). The manner in which FTA provides notice of noncompliance and enforces under this provision depends on the particular circumstances.

Due to the large number of transit agencies and the existing certification and review processes, FTA does not believe it is practical for FTA to review ASPs annually for each covered transit agency for compliance with the PTASP requirements. However, FTA notes that it does not need to wait until the Triennial Review process to review a transit agency's compliance with PTASP. FTA may do so whenever it deems necessary. Further, FTA does not believe that an additional requirement for an agency to upload a signature page is necessary at this time. FTA is considering the development of a mechanism to receive allegations of non-compliance with the PTASP requirements.

E. Section 673.17—Cooperation With Frontline Transit Worker Representatives

Comments: Six commenters addressed proposed § 673.17(b), which sets forth the cooperation with frontline transit worker representative requirements for transit agencies that do not meet the definition of ''large urbanized area provider.'' Two commenters urged FTA to specify in the final rule what ''cooperation'' means, noting that this is a subjective term that is open to varying interpretations. One of these commenters recommended that FTA require management at small transit agencies to meet with frontline transit worker representatives at least 60 days before the ASP is due so that both parties can review the ASP together. Further, it urged FTA to require management to meet with frontline transit worker representatives again at least 30 days, but no more than 45 days, before the ASP is due.

One of these commenters recommended that FTA encourage small transit agencies to establish joint labor-management safety committees voluntarily. A separate commenter asked what FTA's expectations are for labor representative involvement in the cooperation process, and whether collecting feedback in safety meetings would be sufficient. The same commenter argued that the ambiguity of this requirement and a lack of dispute resolution requirements could lead to conflict.

Two commenters asked how the requirement at § 673.17 dovetails with the proposed Safety Committee provisions at § 673.19.

Response: FTA appreciates comments regarding the requirement for transit agencies that do not serve a large urbanized area to cooperate with frontline transit worker representatives when developing and updating an ASP. This final rule provides each transit agency the flexibility to define how it will involve and cooperate with frontline transit worker representatives to support the development and subsequent updates of the ASP. In § 673.17(b)(2), FTA is requiring each transit agency that does not meet the definition of ''large urbanized area provider'' to document this process in its ASP. In line with existing practice and efforts to ensure flexibility and scalability, FTA declines to establish specific timeline requirements for the cooperation processes as suggested by the commenter.

In response to comments received regarding involvement of a labor union in the required cooperation with frontline employee representatives, FTA notes that 49 U.S.C. 5329(d) and § 673.17(b) do not require transit agencies that do not serve a large urbanized area to involve a labor union in this cooperation process, but that transit agencies may opt to do this voluntarily. Similarly, FTA does not require transit agencies that do not meet the definition of ''large urbanized area provider'' to establish a Safety Committee but notes that these transit agencies may establish a Safety Committee voluntarily. FTA encourages these transit agencies to voluntarily establish Safety Committees and to involve labor unions in the required process of cooperating with frontline employee representatives.

FTA acknowledges the comment that requested clarification of how this requirement relates to the requirement

for a Safety Committee. FTA notes that the requirements for developing, reviewing, and approving ASPs differ depending on whether the transit agency is considered a large urbanized area provider as defined in the rule. Large urbanized area providers must establish a Safety Committee, which must review and approve the agency's ASP and subsequent updates. For transit agencies that must meet PTASP requirements but are not large urbanized area providers as defined in this rule, § 673.17(b) requires the agency to develop the ASP and subsequent updates in cooperation with frontline transit worker representatives.

FTA is not establishing additional requirements or guidance on cooperation with frontline transit workers in this rule. FTA will consider this topic for future guidance and technical assistance.

F. Section 673.19—Safety Committee

1. General

Comments: FTA received several comments about proposed § 673.19, which sets forth the requirements regarding Safety Committees for large urbanized area providers. Several commenters expressed general support for the requirements, noting the importance of a forum for labor and management to work cooperatively to remedy safety issues. A few commenters provided examples of the successful implementation of Safety Committees. One commenter specifically supported limiting the applicability of the Safety Committee requirements to large urbanized area providers.

FTA received comments from 30 local labor organizations expressing that FTA's proposed Safety Committee requirements are insufficient and allow transit agencies to ignore the safety concerns of frontline transit workers. These commenters urged FTA to ensure that the voices of frontline workers are heard in a meaningful way and that transit agencies utilize the safety-related expertise of these workers. They provided numerous examples of safety issues occurring at their transit agencies, including assaults on transit workers, inadequate restroom access, law enforcement response times, premises security, blind spots, and unsafe vehicle conditions. Some noted that their Safety Committees have not yet been effective because transit agencies are not listening to the committees.

Three commenters expressed concern that establishing and operating a Safety Committee will be a significant financial burden for transit agencies. One commenter requested FTA provide flexibility regarding the Safety Committee requirements, noting that employees on the Safety Committee are not always safety professionals.

Two comments addressed the number of Safety Committees that a transit agency may establish. A labor organization commenter stated that requiring one Safety Committee to review and approve multiple ASPs and to conduct its statutorily required responsibilities for multiple ASPs is too burdensome, and recommended that FTA require a ''one ASP, one Safety Committee'' approach. The commenter requested that FTA specify in the final rule that transit agencies must establish one Safety Committee per ASP and may not use the same Safety Committee for multiple ASPs. The second commenter raised concerns about committees other than the Safety Committee addressing issues related to operator assault.

One SSOA commenter asked when transit agencies must comply with the Safety Committee requirements established in the rule.

Response: FTA acknowledges the appreciation for the new Safety Committee requirements received from commenters. FTA also acknowledges the feedback received from the 30 local labor organizations that said the Safety Committee requirements are insufficient and allow transit agencies to ignore the safety concerns of frontline transit workers. FTA is committed to ensuring the voices of frontline workers are heard in a meaningful way and believes the Safety Committee requirements of this final rule accomplish this objective.

FTA appreciates that the formation and ongoing operation of the Safety Committee may increase the burden on transit agencies, both in terms of direct cost and worker availability. FTA reminds the commenters that the Safety Committee is a statutorily required function for applicable agencies and further believes that transit agencies will receive safety benefits from establishing and operating a Safety Committee. FTA also acknowledges the commenter who pointed out many Safety Committee members are not safety professionals. FTA understands this reality and does not expect a transit agency's Safety Committee to replace a transit agency's safety department. In practice, FTA encourages Safety Committees to utilize subject matter expertise from non-committee members to support decision-making. FTA understands that this is a common support structure for Safety Committees when it comes to data analysis and safety risk assessment, as well as information gathering related to specific agency systems, technologies, or procedures. FTA believes the language of this final rule offers sufficient flexibility that ensures the voices of frontline workers are heard in a meaningful way and that the Safety Committee can consult non-member subject matter expertise to support the Safety Committee's needs.

FTA agrees that using the same Safety Committee for multiple ASPs may make meeting Safety Committee requirements more cumbersome. However, to the extent that the Safety Committee is convened and conducts business as required in 49 U.S.C. 5329(d) and part 673, FTA declines to prohibit transit agencies from using the same Safety Committee for multiple ASPs as this may place unnecessary burdens on transit agencies that operate under multiple ASPs. FTA notes that if a transit agency with multiple ASPs would like to establish a Safety Committee for each ASP, this final rule does not prohibit them from doing so.

In response to the commenter that expressed concerns about a transit agency addressing issues such as transit worker assault in a special committee instead of the joint labor-management Safety Committee, FTA confirms that the responsibilities of the Safety Committee, as required in 49 U.S.C. 5329(d) and this final rule, must be addressed by the Safety Committee. FTA notes that a transit agency may use other mechanisms within the organization to address safety risk, such as a special committee, task force, or study, but these mechanisms cannot eliminate or satisfy the role of the Safety Committee to address any of the applicable requirements in this final rule.

FTA notes that in response to the Bipartisan Infrastructure Law, it established one-time compliance dates of July 31, 2022, and December 31, 2022, to address certain Bipartisan Infrastructure Law requirements,[30] including the establishment of Safety Committees and the update and approval of ASPs to reflect the new Safety Committees. FTA is not establishing any such fixed deadlines in this final rule. Instead, the PTASP regulation includes the requirement for transit agencies to review and update their ASPs annually to address needed changes, such as regulatory changes. FTA expects transit agencies to address any regulatory changes in their next ASP update based on their existing ASP

[30] Federal Transit Administration (February 17, 2022). ''Dear Colleague Letter: Bipartisan Infrastructure Law Changes to PTASP Requirements.'' *https://www.transit.dot.gov/safety/public-transportation-agency-safety-program/dear-colleague-letter-bipartisan-infrastructure.*

update process documented in their ASP.

2. Size, Scale and Structure

Comments: FTA received several comments on proposed § 673.19(a)(1), which would require Safety Committees to be appropriately scaled to the size, scope, and complexity of the transit agency. Two commenters explicitly opposed this language and asked FTA to strike it. FTA received several comments requesting additional guidance and clarification of this provision. Some comments expressed concern about the subjectivity of the requirement, including the ambiguity as to who determines whether a Safety Committee is scaled appropriately.

Proposed § 673.19(a)(2) set forth the requirement that Safety Committees be convened by a joint labor-management process. Two commenters suggested revising this language to state that the Safety Committee's structure and operating rules are determined by consensus decisions between labor and management.

Response: FTA's PTASP regulation must address the needs of a wide range of transit environments, from large transit systems to very small providers, and from basic transit applications to extremely complex technologies. As with existing regulatory practice, FTA must ensure that part 673 includes sufficient flexibility to support SMS implementation across these ranges of transit agencies. As a result, FTA expects that Safety Committees will be sized differently based on the size, scope, and complexity of the transit agency. Therefore, FTA declines to change the proposed language.

FTA also encourages transit agencies and their Safety Committees to hold periodic discussions about the size and scope of the Safety Committee to determine whether it is appropriate to add additional members or to change the scope of the Safety Committee's purview, while ensuring that the Safety Committee's activities still meet all statutory and part 673 requirements.

FTA declines the suggestion to revise § 673.19(a)(2), as FTA's proposed language mirrors the statute. FTA notes that § 673.19(c) requires Safety Committee procedures to address the committee's composition, responsibilities, and operations. FTA refers readers to Sections II.F.4 and II.F.6. of the preamble below for additional discussion of this topic and Safety Committee decision-making and dispute resolution, respectively.

3. Membership

Comments: Several commenters remarked on the Safety Committee membership provisions that FTA proposed in § 673.19(b).

One commenter stated that the Safety Committee requirements are unrealistic for frontline transit worker representatives, noting that activities would require Safety Committees to meet at least weekly.

One transit agency commenter strongly supported FTA's proposed language in § 673.19(b) that, to the extent practicable, the Safety Committee must include frontline transit worker representatives from major transit service functions across the transit system. In contrast, a labor organization commenter explicitly opposed this proposed language and requested that FTA remove it from § 673.19(b). This commenter argued that imposing restrictions on the plurality union's choice is inconsistent with 49 U.S.C. 5329(d) and FTA's existing guidance, and it would be inequitable without any corresponding restrictions on a transit agency's choice of management representatives. It argued that the plurality union must have flexibility to choose the transit worker representatives it finds most beneficial for the Safety Committee. A separate commenter requested that FTA clarify the rationale for its proposed language and clarify its application, given that the language does not appear in the statute.

Several comments pertained to the frontline transit worker representative selection process in § 673.19(b)(1). Six commenters expressed concern that the plurality union may select frontline transit worker representatives that are not representative of the entirety of the frontline workforce, particularly in cases where some workers are unrepresented or where an agency has more than one labor organization. Two of these commenters stated that a fairer selection process would be for FTA to require that frontline transit worker representatives be selected from each bargaining unit at a transit agency. One of these commenters urged FTA to establish Safety Committee selection requirements that reflect the objective of informed risk management.

Some comments requested additional guidance from FTA about the selection process. One commenter asked FTA to clarify the definition of ''frontline transit worker'' and asked whether volunteers and contractors need to be represented on the Safety Committee, given they are included in the definition of ''transit worker'' in § 673.5. Two commenters noted that transit agencies may have multiple contractors that provide service and operations and requested more guidance on the structure of frontline transit worker representation on Safety Committees in such situations. One of these commenters urged FTA to confirm that contractors should serve on Safety Committees, given that contractors may be impacted by Safety Committee recommendations. Another commenter stated that its Safety Committee does not include ''line-level'' labor representatives and that including such transit workers on the Safety Committee is not practical, and that the requirement for equal membership of management and frontline transit worker representatives is not realistic. Another commenter stated that some transit workers might not be interested in serving on the Safety Committee and should not be forced to participate.

One commenter stated that the selection criteria for frontline transit worker representatives can allow management to have an unfair advantage on the Safety Committee. The commenter cited an example of a frontline transit worker representative on the Safety Committee who is a member of a union that represents supervisors and asserted this means the Safety Committee no longer has equal numbers of frontline workers and management.

One comment pertained to proposed § 673.19(b)(2), which would require transit agencies without labor unions to adopt a mechanism for frontline transit workers to select the frontline transit worker representatives for the Safety Committee. The commenter requested that FTA provide its rationale for this requirement and clarify its application, noting that it does not appear in 49 U.S.C. 5329(d).

One commenter noted that in the preamble to the NPRM, FTA distinguished between voting Safety Committee members and alternates who serve in a non-voting capacity. The commenter urged FTA to require that the number of non-voting members be limited to an equal number of management and frontline transit worker representatives. It stated that some transit agencies have attempted to add non-voting management positions to Safety Committees, which has tipped the balance in favor of management in a manner inconsistent with 49 U.S.C. 5329(d).

Response: FTA appreciates the feedback received supporting the proposed language in § 673.19(b). FTA acknowledges the comment received regarding the challenges of asking frontline transit workers to participate

in the Safety Committee and notes that frontline worker representative participation is mandated by statute. As such, the requirement is maintained in the final rule.

Similarly, FTA acknowledges the comment that requested FTA remove the language about including frontline transit worker representatives from major transit service functions as it may impose restrictions on the plurality union's choice and would therefore be inconsistent with 49 U.S.C. 5329(d) and inequitable without any corresponding restrictions on a transit agency's choice of management representatives. FTA notes that this language in § 673.19(b) provides parameters to strengthen frontline transit worker representation without contradicting statutory language on the selection of frontline employee representatives by the plurality labor organization. FTA expects that, to the extent practicable, the Safety Committee will include frontline transit worker representatives from major transit service functions. However, FTA notes that this may not be feasible in all situations; FTA includes the statement ''to the extent practicable'' to ensure flexibility for all transit agency applications.

The language in § 673.19(b) reflects FTA's belief that Safety Committees are most effective when they include representatives from multiple service functions. It is intended to strengthen the diversity of frontline worker representation and to ensure a breadth of perspective and expertise to support Safety Committee activity.

FTA also acknowledges comments expressing concern that the plurality union may select frontline transit worker representatives that are not representative of the entirety of the frontline workforce if workers are unrepresented or if an agency has more than one labor organization. FTA also acknowledges the two commenters who recommended that the section should require frontline transit worker representatives be selected from each bargaining unit at a transit agency. FTA agrees that selecting representatives from a narrow pool of only one service function or only from one represented labor organization can inadvertently reduce the effectiveness of the Safety Committee. However, FTA does not agree that FTA should require the plurality labor organization to select Safety Committee members who are not members of their labor union or who are not members of any labor union. FTA acknowledges the potential for narrow representation of frontline transit workers in the Safety Committee. As discussed above, FTA believes that the language in § 673.19(b) regarding including frontline transit worker representatives from major transit service functions to the extent practicable appropriately strengthens frontline worker representation. As such, FTA declines to establish the additional requirements suggested by commenters.

FTA acknowledges comments requesting additional guidance on the frontline transit worker representative selection process and the questions about whether volunteers and contractors need to be represented on the Safety Committee. While FTA has not established requirements for volunteers and contractors to participate as frontline transit worker representatives on the Safety Committee, the plurality labor organization may decide to include these types of workers on the Safety Committee. FTA appreciates that the composition of an agency's workforce may mean that individuals from multiple contracting groups are selected for the Safety Committee. To the extent the selection process meets the requirements of 49 U.S.C. 5329(d)(5)(A) and § 673.19(b), this is permissible. FTA does not currently have any further guidance in this final rule on Safety Committee membership at transit agencies with more than one contracting group. FTA notes this final rule does not require a transit agency that provides contracted service to have contractor management representatives on the Safety Committee, but the agency may do so.

FTA acknowledges the comments expressing concern that the Safety Committee membership requirements are not practicable, including Safety Committee membership by ''line-level'' transit workers and equal membership of management and frontline transit worker representatives. In response, FTA notes that 49 U.S.C. 5329(d)(5)(A) requires the labor organization that represents the plurality of the transit agency's frontline transit workers to select frontline transit worker representatives. The statute does not provide the transit agency the option to determine that including ''line-level'' transit workers is not practicable. Further, FTA reminds the commenters that the Safety Committee's equal membership of frontline employee representatives and management representatives is required by statute.

FTA acknowledges that frontline transit worker representatives may include workers in a supervisory position, as described by the commenter. However, FTA disagrees that this contradicts the requirement for equal frontline transit worker and management representation because some supervisory roles, such as line, route, or regional supervisors, involve work that takes place primarily in frontline environments. Such roles can support operators, monitor field conditions, adjust service levels or routes to respond to potential service disruptions, interact with customers to provide service information, and de-escalate situations that have the potential to result in assaults on operators and other transit workers. If the plurality labor union identifies such an individual as a frontline transit worker representative, they may select this individual for the Safety Committee.

FTA acknowledges the comment regarding § 673.19(b)(2), which requested that FTA provide its rationale for requiring transit agencies without labor unions to adopt a mechanism for frontline transit workers to select the frontline transit worker representatives for the Safety Committee. FTA notes this requirement helps to ensure that when no frontline transit workers are represented by a labor union, the frontline transit workforce will still have a voice in the selection of their representatives on the agency's Safety Committee.

Finally, FTA acknowledges the commenter who urged FTA to require that the number of non-voting Safety Committee members be limited to an equal number of management and frontline transit worker representatives. FTA notes that it has removed all references to voting in the final rule, as described further in section II.F.4 below, and instead, FTA expects Safety Committees to define decision-making mechanisms.

4. Safety Committee Procedures

General

Comments: FTA received several comments regarding § 673.19(c), which sets forth requirements for Safety Committee procedures. Two commenters expressed their general support for FTA's proposal requiring transit agencies to include or incorporate by reference such procedures in the ASP.

One commenter noted that the procedural requirements are not present in the statute and asked whether transit agencies are required to negotiate the procedures with frontline transit worker representatives. The commenter stated this could impact collective bargaining agreements and have cost impacts for the transit agency.

One commenter expressed general support for this provision but suggested that FTA require an agency's Accountable Executive to approve the Safety Committee procedures and that they be included by reference in the ASP. The commenter expressed concern that disputes over the procedures could delay the ASP approval process and result in negotiations with labor organizations over issues that are outside of a collective bargaining agreement. Two commenters recommended the Safety Committee procedures should be approved by the Accountable Executive and included by reference in the ASP, but not approved by the Safety Committee. One commenter expressed concern that Safety Committees do not always function collaboratively, from setting meeting agenda items to voting on decision points.

Two commenters urged FTA to require transit agencies to reach an agreement with transit workers about the Safety Committee's structure and procedures through either consensus or democratic voting. One of these commenters urged that such an agreement must be in writing and included or incorporated by reference in the ASP, expressing that requiring transit agencies merely to ''address'' the procedural items listed in § 673.19(c) is inadequate.

Response: FTA appreciates the positive feedback received from commenters about the requirement to include or incorporate by reference the Safety Committee procedures in the ASP.

FTA acknowledges that the statute does not define specific procedures for Safety Committees. FTA notes that, as with existing requirements regarding SMS processes and activities, the PTASP regulation establishes procedural requirements to ensure effective implementation of statutory requirements. In response to the commenter's question about potential impacts on collective bargaining agreements, FTA notes that negotiation is not explicitly required, but § 673.19(a)(2) requires the Safety Committee to be convened by a joint labor-management process. FTA acknowledges that, in practice, this may involve some level of negotiation.

FTA acknowledges the commenter that suggested FTA require the Accountable Executive to approve the Safety Committee procedures and that they be included by reference in the ASP. Section 673.19(c) requires agencies to include or incorporate by reference in their ASP the Safety Committee procedures. Further, as described in Section II.F.5 below, the Accountable Executive's role is to sign the ASP and ensure that the ASP and SMS processes are carried out. As such, the commenter's request was addressed by the NPRM, and no changes are made in the final rule in response to this comment. FTA notes that this final rule does not establish Accountable Executive veto power over the contents of the ASP, because that would be inconsistent with statutory requirements relating to the composition of Safety Committees, as well as the statutory requirement that the Safety Committee and Board of Directors must approve the ASP—not the Accountable Executive.

FTA disagrees that it is appropriate to exclude the Safety Committee procedures portion of the ASP, even if incorporated by reference, from the Safety Committee's approval. The statute requires the Safety Committee to approve the ASP, and as noted above, the procedures must be included or incorporated by reference in the ASP.

FTA acknowledges the concern regarding challenges associated with operating a Safety Committee with equal frontline transit worker and management engagement. FTA encourages Safety Committees to work collaboratively to set and execute procedures for determining Safety Committee agenda items and making decisions. These items are discussed further in the preamble sections below.

FTA believes that the use of the word ''address'' before listing the minimum requirements for Safety Committee procedures is appropriate because it provides flexibility, and the accompanying regulatory requirements are sufficient to ensure a transparent and standardized process. In § 673.19(c), FTA requires each large urbanized area provider to include or incorporate by reference in its ASP the procedures regarding the composition, responsibilities, and operations of the Safety Committee, including the organizational structure, size, and composition of the Safety Committee and how it will be chaired; how the Safety Committee will reach and record decisions; and how the Safety Committee will manage disputes to ensure it carries out its operations. FTA notes that the ASP and any referenced documents or appendices that are used to address PTASP regulation requirements are part of the annual review and approval process to confirm that the ASP meets PTASP regulation requirements. Thus, the Safety Committee will review and approve Safety Committee procedures included or referenced in the ASP through this process. Further, a Safety Committee may opt to use its procedure for reaching decisions, which may include voting or consensus mechanisms, to formally endorse its structure and procedures.

Meeting Agendas, Notices, and Minutes

Comments: A local union stated that FTA should require transit agency management and frontline transit workers to agree on how often the Safety Committee should meet and require the transit agency to adhere to the agreed upon schedule. Similarly, a transit agency requested that FTA require transit agencies to give advance meeting notice to Safety Committee members as part of the Safety Committee procedures.

Two commenters noted the need for Safety Committees to have regular, formal meetings. A local union commenter expressed concern that at their transit agency, management creates and presents Safety Committee meeting agendas without seeking input or a vote from frontline transit worker representatives, and that management representatives have not shared meeting minutes with the frontline transit worker representatives.

Response: While FTA agrees that establishing a meeting schedule for the Safety Committee would be beneficial for Safety Committees, it disagrees that the rule should define or require the transit agency to define a specific meeting schedule. The PTASP regulation gives flexibility to Safety Committees to schedule meetings in a manner suitable to the size, scope, and complexity of their agency. Some agencies may decide to define a set schedule and document this in their Safety Committee procedures. FTA also acknowledges the commenter's concern regarding the development and sharing of Safety Committee meeting agendas. FTA agrees with commenter concerns regarding development and advance notice of Safety Committee meetings. Accordingly, FTA has added a requirement in § 673.19(c)(2) for Safety Committee procedures to include the process for developing and sharing meeting notices.

In response to the comment about meeting minutes, FTA notes that it is adopting the proposed requirement in§ 673.19(c)(2) for Safety Committee procedures to document how meeting minutes will be recorded and maintained.

Training and Qualifications

Comments: Several commenters, as well as an attendee at an FTA webinar, expressed concern that some members of Safety Committees may not have

adequate training or qualifications to perform their required responsibilities. Two commenters asked whether FTA would provide or recommend training for Safety Committee members. One commenter recommended that FTA provide training about SMS processes and data analysis to frontline transit worker representatives. Another commenter noted that training Safety Committee members would add costs to the transit agency.

FTA received two comments on its proposed language in § 673.19(c)(3), which states that Safety Committee procedures must include any required ASP and SMS training for members. A commenter asked FTA to clarify whether this training is required, or if a transit agency and its SSOA may decide whether to provide it. This commenter further recommended that FTA address any safety training requirements for Safety Committee members in the Safety Promotion section of the regulation at § 673.29 instead.

Two commenters asked whether Safety Committee members are required to comply with the Public Transportation Safety Certification Training Program (PTSCTP) requirements established under 49 CFR part 672.

Response: FTA acknowledges comments that express concern that Safety Committee members may not have adequate training or qualifications to perform their required responsibilities. While this final rule does not establish training requirements specific to Safety Committee members, transit agencies may establish their own training requirements for their workers in accordance with their comprehensive safety training program. Section 673.19(c)(3) provides that any required training must be documented in the Safety Committee procedures. FTA appreciates the suggestion to include this requirement in the Safety Promotion section of the regulation instead, it but declines to make this change. For clarity, FTA believes that it is best for all Safety Committee-related procedures to be addressed in a single section of the regulation.

FTA acknowledges the comment that noted training for Safety Committee members would add costs to the transit agency. FTA acknowledges that FTA-provided or FTA-recommended training for Safety Committee members is useful and has the potential to reduce burden on transit agencies, and FTA will consider this topic for future technical assistance.

The PTSCTP requires at 49 CFR part 672 that RTAs designate transit workers who are directly responsible for safety oversight and ensure those workers comply with PTSCTP training requirements. The PTSCTP also offers a voluntary program for bus transit workers designated by their transit agency as having direct safety oversight responsibility. FTA agrees that participation in the PTSCTP curriculum can provide valuable context for Safety Committee members, but it does not require that Safety Committee members participate in the PTSCTP, unless they are otherwise required to do so under part 672.

Compensation

Comments: A transit agency and a labor organization requested that FTA require transit agencies to include information about compensation for Safety Committee members in their Safety Committee procedures. The labor organization urged FTA to require transit agencies to pay frontline transit worker representative members at their regular hourly rate for all time spent in Safety Committee meetings and conducting Safety Committee business. The commenter expressed that this would maintain the balance of power between management, which is typically compensated on a salary basis, and frontline transit worker members, which are usually compensated on an hourly basis.

Response: FTA appreciates the comments and concerns regarding compensation for Safety Committee members. FTA notes that 49 U.S.C. 5329(d) does not require transit agencies to compensate Safety Committee members for time spent on Safety Committee activities. While FTA does not manage transit agency compensation structures, FTA agrees that it is important for Safety Committee procedures to address this issue for transparency. In response to comments, FTA therefore is adding a requirement at § 673.19(c)(4) for transit agencies to document in their Safety Committee procedures the Safety Committee compensation policy that the agency has established for participation in Safety Committee meetings. FTA is not requiring transit agencies to compensate the members of the Safety Committee. FTA is only requiring that the agency establish a compensation policy and document such policy in its Safety Committee procedures. FTA notes that the transit agency must have a policy regarding compensation; however, this may include a policy to not provide compensation.

Coordination With Board of Directors and Accountable Executive

Comments: One commenter recommended that FTA amend the proposed requirement at § 673.19(c)(7) from describing how the Safety Committee will coordinate with the Board of Directors or equivalent entity and the Accountable Executive to ''how the Safety Committee will communicate necessary information'' to those entities, noting that this change would clarify and more narrowly define the requirement. Two commenters requested that FTA provide guidance on this process, including FTA's expectations regarding the required amount and level of coordination.

Response: FTA disagrees that the Safety Committee procedures should only address how the Safety Committee will communicate information to the Board of Directors or equivalent entity and the Accountable Executive. The term ''coordinate'' was specifically chosen to reflect the flow of information in both directions—to the Safety Committee and from the Safety Committee. The term also encompasses joint activities the Safety Committee, Board of Directors or equivalent entity, and the Accountable Executive may want to undertake. However, FTA recognizes that communication between the Safety Committee, Accountable Executive, and Board of Directors or equivalent entity is a key element of coordination and has revised § 673.19(c)(7) to ''how the Safety Committee will coordinate and communicate with the Board of Directors, or equivalent entity, and the Accountable Executive'' for clarity.

Due to the varying operating environments of transit systems, FTA is deferring to transit agencies to establish and document the appropriate process of coordination between the Safety Committee, Board of Directors or equivalent entity, and Accountable Executive, including details on the frequency and level of coordination.

Additional Suggested Procedures

Comments: One commenter stated that the required Safety Committee procedures should include a mechanism for holding Safety Committee members accountable for fulfilling their responsibilities, such as attendance and completion of tasks assigned to the Safety Committee. Two commenters stated that FTA should allow transit agencies to set minimum qualifications for participation on the Safety Committee, such as minimum experience requirements or restrictions for certain individuals based on their

previous safety performance or failure to attend Safety Committee meetings. Another commenter urged FTA to strongly encourage frontline transit worker representatives to participate fully at Safety Committee meetings. Two commenters stated that an agency should have the authority to include procedural language to remove Safety Committee members who intentionally fail to attend meetings.

Three commenters requested that FTA require the Safety Committee procedures include an agreement between management and frontline transit worker representatives regarding participation in Safety Committee meetings by non-members. Two commenters stated that at some transit agencies, managers who are not on the Safety Committee participate in meetings, creating a power imbalance between management and frontline transit worker representatives. Another commenter noted that it is reasonable to expect that a Safety Committee will seek the expertise of others within and outside the transit system as it seeks to identify and define safety risk mitigations and suggested that the Safety Committee define procedures for non-members to participate in Safety Committee meetings.

Response: Establishing specific minimum Safety Committee qualifications or restrictions on frontline transit worker representative membership in part 673, such as minimum experience requirements or excluding a frontline transit worker representative selected for the Safety Committee based on the individual's safety performance, would impinge on the statutorily defined role of the labor organization representing the plurality of frontline transit workers to select frontline employee representatives for the Safety Committee. Transit agencies may discuss selection criteria with the entity or entities responsible for selecting management and frontline transit worker representatives, and these entities may voluntarily adopt their own selection criteria. However, FTA declines to require this in the final rule.

FTA agrees that Safety Committee meetings should be attended by all members. While FTA is not establishing requirements for attendance, FTA recommends that agencies document in their ASPs any Safety Committee meeting scheduling and attendance policies.

FTA appreciates the concern voiced by the commenters that Safety Committee participation by non-members may result in a power imbalance. FTA agrees that procedures for outside participation in Safety Committee meetings helps to ensure that the Safety Committee conducts its vital work effectively, while maintaining the balance between management and frontline transit worker representatives required by statute. FTA defines these requirements at § 673.19(c)(5), which requires the Safety Committee procedures include how the Safety Committee will access technical experts, including other transit workers, to serve in an advisory capacity as needed.

5. Safety Committee Authorities, Accountabilities, and Responsibilities

General

Comments: Five commenters asked for additional clarity of the authorities, accountabilities, and responsibilities of the Safety Committee. One commenter asked FTA to clarify what ''authorities, accountabilities, and responsibilities'' the Safety Committee would have, as described in proposed § 673.23(d)(3), arguing that the committee has an advisory role. One commenter opposed Safety Committee participation in the Safety Risk Management process, as set forth in § 673.19(d)(3), expressing that this dilutes the power of data-decision risk management.

Response: As established by § 673.23(d), transit agencies must identify the authorities, accountabilities, and responsibilities for the management of safety. FTA notes the Safety Committee does not merely serve in an advisory role and instead must meet statutorily defined requirements. The Bipartisan Infrastructure Law established several affirmative responsibilities for the Safety Committee at 49 U.S.C. 5329(d), such as review and approval of the ASP, setting annual safety performance targets for the safety risk reduction program, and supporting the operation of the transit agency's SMS.

The Safety Committee's participation in the Safety Risk Management process is statutorily required under 49 U.S.C. 5329(d)(5)(A)(iii). FTA does not agree that the Safety Committee's support of the Safety Risk Management process dilutes the power of data-driven risk management. The Safety Committee's participation in the Safety Risk Management process and the related setting of safety performance targets explicitly supports data-driven decision-making.

Relationship to the Accountable Executive

Comments: FTA received several comments voicing opposing views regarding the role of the Safety Committee and the Accountable Executive.

Some commenters, including transit agencies, argued that final decisions regarding a transit agency's safety program should rest with the Accountable Executive, including the contents of an ASP, implementation of Safety Committee recommendations, and resolution of Safety Committee disputes. Some commenters argued that this aligns authority with accountability, as the Accountable Executive is ultimately accountable for the agency's safety performance. In support of this view, three commenters cited a prior Frequently Asked Question (FAQ) on FTA's website about this issue, which FTA removed prior to publication of the NPRM.

Conversely, FTA received two comment letters from certain members of Congress explaining Congressional intent in enacting the Bipartisan Infrastructure Law amendments to 49 U.S.C. 5329 relating to Safety Committees. These members of Congress stated that the intent of these amendments was to require a transit agency's Accountable Executive to implement safety risk mitigations that are recommended by the Safety Committee and included in the ASP. In their view, the Accountable Executive may not revisit, ignore, or reject elements of an approved ASP. Both letters urged FTA to remove any language from the rule that relegates the Safety Committee to an advisory role, including language that FTA proposed in § 673.23 regarding the Accountable Executive's role to ''receive and consider'' safety risk mitigations.

Similarly, several other commenters, including labor organizations, opposed Accountable Executive veto power over Safety Committee recommendations and urged FTA to require the Accountable Executive to implement all Safety Committee recommendations. Commenters stated that giving the Accountable Executive veto power would tip the power balance on Safety Committees in favor of management and noted that management already has a voice on the Safety Committee through the management representative members. Several commenters asserted that giving the Accountable Executive veto power would make the Bipartisan Infrastructure Law changes to 49 U.S.C. 5329 ineffective. Many stated that frontline transit workers already had the opportunity to raise safety concerns to management prior to establishing a Safety Committee, urging FTA to require transit agency management to act on these recommendations to make meaningful change.

Two labor organizations noted that FTA removed the FAQ referenced by other commenters from FTA's website and one argued that this former FAQ should not be relied upon as guidance regarding the role of the Safety Committee.

Response: FTA appreciates the questions and suggestions from commenters to clarify the relationship between the Safety Committee and Accountable Executive. FTA agrees that the Safety Committee should have a strong voice in safety-related decision-making and agrees that the Safety Committee is not merely an advisory body.

In response to comments, FTA is adopting several revisions to the rule to clarify the role of the Accountable Executive regarding implementation of mitigations recommended by the Safety Committee. As a preliminary matter, FTA agrees with the commenters who opined that the Accountable Executive must implement safety risk mitigations that are included in the ASP. Section 673.5 of FTA's 2018 PTASP final rule clearly conveys that the Accountable Executive is ''ultimately responsible for carrying out the Public Transportation Agency Safety Plan of a public transportation agency.'' FTA understands commenters' concern about aligning authority and accountability. However, the Accountable Executive must implement an ASP that has been duly approved by the agency's Safety Committee and Board of Directors. If the approved ASP includes mitigations, the Accountable Executive must carry them out. This is consistent with the 2018 final rule and FTA's current practice.

Further, 49 U.S.C. 5329(d)(1)(I) requires transit agencies to include mitigations in their ASP related to the safety risk reduction program, including mitigations related to vehicular and pedestrian accidents involving buses and assaults on transit workers. To harmonize the regulation with this statutory requirement, FTA is adopting §§ 673.11(a)(7)(iv) and 673.25(d)(5), which convey that the ASP must include safety risk reduction program mitigations when recommended by the Safety Committee based on a safety risk assessment. FTA refers readers to Section II.G of this preamble for more discussion about these changes.

Due to the above, FTA agrees with the commenters who argued that proposed § 673.23(d)(1) is contrary to statute. This proposal stated that the Accountable Executive ''receives and considers'' mitigations from the Safety Committee. Given that the Accountable Executive is ultimately responsible for implementing the transit agency's approved ASP, FTA agrees that the Accountable Executive must implement the safety risk reduction program mitigations included in the ASP under § 673.11(a)(7)(iv). While FTA acknowledges that the Accountable Executive retains control or direction over the human and capital resources needed to maintain an agency's ASP under § 673.5, the Accountable Executive does not have authority under part 673 to decline to implement elements of an approved ASP. Accordingly, FTA is adopting revisions to § 673.23(d)(1) to convey that the Accountable Executive must implement the safety risk reduction program mitigations included in the ASP under § 673.11(a)(7)(iv).

FTA notes that 49 U.S.C. 5329(d) does not require that the ASP include mitigations unrelated to the safety risk reduction program. As such, and in response to comments, FTA also has revised § 673.23(d)(1) to clarify the Accountable Executive's role with respect to these other mitigations. This provision requires that the Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigations that are recommended by the Safety Committee (*i.e.,* mitigations not related to the safety risk reduction program). The Accountable Executive may decide not to implement these mitigations, consistent with the Accountable Executive's authority over the control or direction over the human and capital resources needed to develop and maintain the ASP. However, FTA believes that the Accountable Executive should articulate a reasoned explanation for this decision. Accordingly, FTA has added § 673.25(d)(6) to the regulation, which provides that if the Accountable Executive declines to implement such a mitigation, the Accountable Executive must prepare a written statement explaining this decision consistent with the PTASP recordkeeping requirements at § 673.31. The Accountable Executive then must submit and present this explanation to the Safety Committee and the Board of Directors or equivalent entity for discussion. FTA believes that this strikes a reasonable balance between the Accountable Executive's ultimate accountability for safety performance and the Safety Committee's vitally important role in the SMS process. FTA emphasizes that the transit agency may opt to include these other mitigations in the ASP if it wishes to do so. As explained above, the Accountable Executive would then be required to implement these mitigations because they are included in the ASP.

Regarding the PTASP FAQ mentioned by commenters, FTA rescinded the FAQ in 2022. Transit agencies should not rely upon it as current guidance regarding the role of the Accountable Executive and Safety Committee.

Focus of the Safety Committee

Comments: Several commenters discussed the focus of the Safety Committee. Eight commenters expressed concern that the Safety Committee or its activities could be used as a negotiating tactic in collective bargaining or other labor negotiation activities. Some of these commenters asserted this could delay approval of an ASP and therefore impact an agency's ability to receive section 5307 funding. One commenter urged FTA to prohibit use of the Safety Committee to conduct contract negotiations or other collective bargaining activities.

Five commenters stated that FTA should require that Safety Committees focus exclusively on safety. One of these commenters suggested FTA do so by revising the definition of ''Safety Committee'' in § 673.5.

Response: FTA agrees that the Federal statutory responsibilities of Safety Committees, as outlined in 49 U.S.C. 5329(d), focus on safety at the transit agency. FTA's definition of ''Safety Committee'' at § 673.5 reflects that the Safety Committee is a joint labor-management committee ''on issues related to safety.'' FTA believes that this definition sufficiently sets forth the focus of the Safety Committee and therefore declines to make any further changes to the regulation. However, FTA will not prohibit the Safety Committee from addressing issues with a nexus to safety outside of those identified in this final rule. FTA appreciates that some safety concerns may overlap with labor-related concerns and that individual Safety Committees will establish their own protocols for addressing safety-related business. Further, FTA appreciates that transit agencies may need to amend the terms of their collective bargaining agreements or other labor agreements to enable transit workers to participate in the Safety Committee.

Relationship to Safety Departments

Comments: Several commenters expressed concern that certain safety-critical tasks assigned to the Safety Committee in § 673.19(d) should be the responsibility of Safety Department representatives. Two commenters expressed concern regarding the practicality of having frontline transit worker representatives complete the work described in § 673.19(d).

Three commenters opposed FTA's proposed language in § 673.19(d) that

the Safety Committee conducts activities to ''oversee'' the agency's safety performance, expressing that this is the responsibility of the agency's Chief Safety Officer and Accountable Executive. These commenters suggested that FTA replace the word ''oversee'' with alternative language. One commenter further urged FTA to clarify that the decisions of an agency's Safety Department are not subject to review by the Safety Committee. One commenter urged FTA to clarify that ''oversee'' refers only to safety performance and advising on safety initiatives.

Response: FTA appreciates the concerns about the potential for overlap between the Safety Committee and Safety Department and the practicality of having frontline transit workers complete the work described in § 673.19(d). However, these Safety Committee responsibilities are statutorily required.

FTA notes that the Safety Committee does not replace the transit agency's Safety Department but rather augments the transit agency's SMS by supporting Safety Risk Management and Safety Assurance processes such as the safety risk reduction program. The Safety Committee has several statutorily defined responsibilities to oversee safety performance through review and approval of the ASP, setting annual safety performance targets for the safety risk reduction program, and supporting the operation of the transit agency's SMS. Therefore, FTA does not agree that it is appropriate to replace ''oversee'' with alternative language.

This final rule does not eliminate any existing authority, accountability, or responsibility established for the Accountable Executive, Safety Department, or Chief Safety Officer. FTA reminds commenters the Safety Committee has an equal number of management representatives, which may include members of the Safety Department.

Monitoring Safety Committee Performance

Comments: Some commenters expressed concern about holding Safety Committees accountable for fulfilling their responsibilities. Two of these commenters asked who has ultimate responsibility for the Safety Committee and for overseeing its performance. One commenter further asked who is responsible for maintaining compliance with Federal requirements in the absence of consensus in the Safety Committee. Another commenter argued that the transit agency should have ultimate responsibility for the Safety Committee. One commenter urged FTA to add Safety Committee accountability measures or best practices to the final rule, noting that certain Federal funding is contingent on having an ASP that is approved by the Safety Committee.

Response: FTA appreciates the questions and suggestions from commenters on Safety Committee accountability. FTA reiterates that the Safety Committee's responsibilities are required by statute. Per § 673.23(d)(3), transit agencies must identify the authorities, accountabilities, and responsibilities necessary for the Safety Committee, as they relate to the development and management of the transit agency's SMS. FTA believes that transit agencies are capable of ensuring appropriate accountability for Safety Committee members and § 673.23(d)(3) provides appropriate flexibility for them to do so. FTA notes that the existence of the Safety Committee does not eliminate any existing authority, accountability, or responsibility established for the Accountable Executive, Safety Department, or Chief Safety Officer. FTA understands that disputes might occur on the Safety Committee and addresses this issue in Section II.F.6 of this preamble below.

6. Decision-Making and Dispute Resolution

Comments: Several commenters offered comments and proposed requirements for Safety Committee decision-making processes.

FTA received comments asking for clarification regarding ''voting'' as the mechanism for approving an ASP. One transit agency noted the word ''vote'' in proposed § 673.19(c) implies that Safety Committees must approve the ASP through voting, which is contrary to the commenter's previous understanding. This commenter noted that voting is workable if the Accountable Executive is the tiebreaker. Two labor commenters stated that Safety Committees should be required to use a one-person-one-vote system with majority rule or another voting system.

In contrast, one transit agency stated that FTA should remove the word ''vote'' from § 673.19(c), arguing that voting increases burden and the likelihood of conflict and that Safety Committees should be permitted to establish their own decision-making processes.

FTA received several comments voicing opinions regarding Safety Committee tiebreaking and dispute resolution mechanisms; these commenters noted that deadlocks are likely given that committees are comprised of equal numbers of management and transit worker representatives. FTA received one comment asking what to do if the Safety Committee could not come to an agreement.

Several commenters shared feedback on FTA's proposal in § 673.19(c)(7), which would require the ASP to include procedures on how the Safety Committee will manage disputes and tie votes to ensure it carries out its operations. Five commenters stated that FTA should require a specific tiebreaking mechanism in the final rule, with one commenter noting that leaving this dispute resolution process up to the transit agency could lead to confusion and inequity. Several commenters, including transit agencies and a transit industry association, either suggested that FTA designate the Accountable Executive or Chief Safety Officer as the tiebreaker for the Safety Committee.

One of these commenters stated that having the Accountable Executive as the tiebreaker ensures the Accountable Executive remains accountable and that Federal funds are protected.

FTA received several comments, including from labor organizations and certain members of Congress, arguing that the Accountable Executive must not act unilaterally as a tiebreaker for the Safety Committee. Commenters stated that designating a member of management as a tiebreaker would circumvent the requirement for equal representation on the Safety Committee and that FTA should establish a fair and consistent process that maintains the power balance between management and frontline transit workers. These commenters urged FTA instead to require transit agencies to use the dispute resolution procedure in the transit agency's collective bargaining agreement or some other mutually agreed-upon process.

One commenter also suggested that FTA require nonunionized transit agencies to establish a process to send Safety Committee disputes to a neutral third party decisionmaker.

One commenter noted it would be problematic to send tie votes to a third-party decision-maker selected only by one side or to allow a committee chair to break ties. Two other commenters opposed sending disputes to a neutral arbitrator or mediator, stating that third party neutrals might not have appropriate background knowledge to address the issue and that this would be a lengthy process.

One commenter requested clarification regarding who will write the dispute resolution process and how it will be approved and noted that if the process is subject to labor-management agreement there could be two deadlocks

instead of one. One commenter stated that in the event of deadlock with respect to the dispute resolution procedures, the Accountable Executive should be the tiebreaker in that one specific scenario only.

Two commenters requested that FTA provide guidance on Safety Committee dispute resolution best practices. One commenter recommended that FTA convene a national working group with transit labor and management representatives to establish these best practices and requested that FTA provide a sample procedure or workflow for Safety Committees to use to resolve disputes.

Response: FTA acknowledges the comments received expressing opinions on Safety Committee voting processes. FTA carefully considered all such comments and the associated concerns, including the varied implications of different voting systems and the potential conflicts surrounding tie votes. In this final rule, FTA is not mandating a specific mechanism for Safety Committee decision-making and has removed the word ''voting'' from § 673.19(c).

However, FTA agrees with commenters that Safety Committees need an agreed-upon decision-making process. It is therefore requiring at §§ 673.19(c)(6) and (8) that Safety Committee procedures include how the committee will reach and record decisions and manage disputes to ensure the Safety Committee carries out its operations. Safety Committees may decide to adopt a voting mechanism, but FTA is not requiring them to do so. This will provide each Safety Committee the flexibility to adopt the decision-making mechanism that best works for them.

In response to comments requesting clarification about disputes, FTA also has revised § 673.19(c)(8) to clarify that the Safety Committee may use the dispute resolution or arbitration process from the transit agency's collective bargaining agreement, or a different process that the Safety Committee develops and agrees upon. As noted above, FTA is not mandating a specific mechanism or avenue for resolving disputes, as FTA has determined that transit agencies and their Safety Committees should have flexibility to establish the procedure best suited to their unique environments. Agencies may decide to leverage existing dispute resolution processes, such as sending disputes to a neutral third-party or using the dispute resolution or arbitration process from the transit agency's collective bargaining agreement, but they are not required to do so.

However, FTA also revised § 673.19(c)(8) to make clear that the Accountable Executive, may not be the tiebreaker to resolve Safety Committee disputes. FTA has defined the Accountable Executive to have the responsibility for signing the ASP prior to it being sent to the Safety Committee for approval. Additionally, the Accountable Executive is ultimately responsible for implementing the transit agency's approved ASP. Because of these unique roles within the PTASP process, if the Accountable Executive also were to serve as the tiebreaker, it impermissibly would give them authority to perform the roles prescribed by Congress for Safety Committees, including approval of an ASP, establishment of performance targets for the risk reduction program, and determination of risk reduction program mitigations for inclusion in the ASP. *See* 49 U.S.C. 5329(d)(1)(A) and (I) and (d)(4)(A).

FTA agrees that the dispute resolution process must be agreed upon by the members of the Safety Committee using the Safety Committee procedures in § 673.19(c)(6) to reach and record decisions and subject to the provisions in § 673.19(c)(8). The ASP and any documents incorporated by reference that are necessary for fulfilling PTASP requirements, including the Safety Committee procedures, are subject to the Safety Committee's review through the annual ASP review and approval process. FTA also strongly encourages transit agencies and Safety Committees to work collaboratively to establish these procedures prior to the ASP approval process.

FTA appreciates the comments requesting additional guidance and will consider actions relating to Safety Committee decision-making in the future.

7. Agency Safety Plan Approval

Comments: Eight commenters expressed concern with requiring the Safety Committee to approve the ASP, as set forth in proposed §§ 673.19(d)(1) and 673.11(a)(1).

Three commenters stated the Safety Committee should not be involved in ASP approval process and argued that labor should participate in the development process in an advisory role instead. Two of these commenters asked FTA to mirror the language regarding Safety Committee ASP review on proposed § 673.17(b)(1), which states the ASP is developed in cooperation with frontline transit workers. Three commenters suggested that the final rule state that the Safety Committee reviews ''draft'' ASP language, arguing that the Safety Committee has no authority to change policies or procedures summarized or referenced in the ASP. Similarly, a separate commenter asked FTA to clarify that the underlying drafting of the ASP most likely will be completed by agency management or safety consultants, not the Safety Committee. One commenter noted that Safety Committee approval of the ASP adds burden for transit agencies without any additional funding support.

In contrast, FTA received other comments supporting Safety Committee approval of the ASP. Comments from members of Congress and a labor organization stated that congressional intent was for Safety Committees to have more than an advisory role, with the labor organization stating that Congress intended Safety Committees to be delegated decisions on safety matters.

One commenter stated that transit agencies do not always provide sufficient time for Safety Committee members to review ASP updates, which means that Safety Committees cannot reasonably and adequately approve the ASP.

Two commenters stated that the rule should establish explicit requirements for how Safety Committees approve ASPs.

Response: FTA acknowledges the commenters that expressed concern with the requirement for Safety Committees to review and approve ASPs. FTA notes that ASP approval is a key Safety Committee responsibility required by statute at 49 U.S.C. 5329(d)(1)(A). FTA reiterates that per the statute, the Safety Committee's role is not merely advisory.

FTA declines to establish more specific requirements for how Safety Committees approve ASPs. As discussed in section II.F.6 of this preamble, FTA is adopting requirements at § 673.19(c)(6) for documenting how the Safety Committee will reach and record decisions and at § 673.19(c)(8) for documenting how the Safety Committee will manage disputes to ensure it carries out its operations. FTA is providing each Safety Committee flexibility to adopt the decision-making mechanism that best works for them. FTA understands the concern regarding Safety Committees potentially not having sufficient time to review the ASP. Section 673.11(a) requires the transit agency to establish a timeline for the annual ASP review and update. Further, § 673.19(c)(9) requires that Safety Committee procedures address how the committee will carry out its responsibilities, which includes ASP approval. FTA encourages transit agencies and Safety Committees to

establish the ASP update timeline cooperatively and to ensure that the timeline permits each applicable group sufficient time to review the ASP and any referenced materials.

The Bipartisan Infrastructure Law established a role for the Safety Committee to approve the ASP as one vitally important step in the ASP approval process. This final rule reflects the critical role Congress established for the Safety Committee.

8. Access to Agency Data and Resources

Comments: FTA received several comments related to the Safety Committee's access to transit agency data. Several commenters stated that FTA should require transit agencies to provide Safety Committees access to all safety data available to the transit agency, including safety event information and any information that is reasonably relevant for accomplishing the Safety Committee's responsibilities. One commenter stated that this information should include each hazard report that a transit agency receives from workers and any action taken in response. One commenter stated that this should include any information described in § 673.31 when requested by the Safety Committee. This commenter argued that a Safety Committee cannot meaningfully review or approve an ASP without access to this information. Another commenter noted that it is difficult for labor representatives to be partners in solving safety issues if the Safety Committee does not have quick access to relevant information. One local union stated anecdotally that its transit agency does not permit the Safety Committee to access certain information unless the committee files an information request.

Two commenters stated that FTA should require transit agencies to allow Safety Committees to inspect all transit system vehicles and properties at least once per year and to inspect any vehicle or workspace involved in an accident, assault, or other serious safety event within 48 hours of the incident. One local union noted anecdotally that its transit agency has not permitted the Safety Committee to conduct walk-through inspections of transit property.

Response: FTA appreciates that the Safety Committee's work will require transit agencies and Safety Committees to agree upon the appropriate level of access the Safety Committee needs to perform its work. Section 673.19(c)(5) requires that Safety Committee procedures address how the committee will access transit agency information, resources, and tools to support its deliberations. This provision also requires that the procedures address how the Safety Committee will access submissions to the agency's transit worker safety reporting program. While the requirement at 673.19(c)(5) does not require a transit agency to provide the Safety Committee with every piece of data and information maintained by the agency, the requirement is inclusive of all data reasonably necessary for the Safety Committee to perform its statutorily required responsibilities. Transit agencies must provide access to information necessary for the Safety Committee to execute their duties established under 49 U.S.C. 5329(d), and as described in this part and in the transit agency's ASP.

FTA disagrees that it is appropriate for FTA to require transit agencies to permit Safety Committee access to specific locations for inspections. Congress granted specific RTA inspection authority to State Safety Oversight Agencies but has not established this authority for Safety Committees. Further, transit agency safety departments typically conduct these types of activities. FTA does not expect a transit agency's Safety Committee to replace a transit agency's safety department. As noted above, FTA expects that Safety Committees will have access to information reasonably necessary for them to fulfill their statutory responsibilities. This may include information related to inspections, to the extent it is reasonably necessary for the Safety Committee to identify and recommend mitigations under 49 U.S.C. 5329(d)(5)(A)(iii)(I).

G. Section 673.20—Safety Risk Reduction Program

1. Applicability

Comments: One commenter supported limiting the applicability of the safety risk reduction program to large urbanized area providers. One commenter asked whether the safety risk reduction program applies only to bus modes. Another commenter noted that the safety risk reduction program does not appear to address historic streetcars and other open cab rail vehicles.

Response: FTA appreciates the support from commenters. FTA notes that the definition of ''large urbanized area provider'' in this rule at § 673.5 does not distinguish modes of service. The safety risk reduction program requirements therefore apply to any transit agency that meets the definition of a large urbanized area provider. The safety risk reduction program includes all modes of service except for modes that are excluded from PTASP generally under § 673.11(e) (*i.e.,* passenger ferries regulated by the United States Coast Guard and rail fixed guideway public transportation service regulated by the Federal Railroad Administration). The safety risk reduction program applies to historic streetcar service provided by large urbanized area providers, to the extent this service is otherwise subject to the PTASP regulation.

2. Connection to SMS

Comments: Several commenters sought clarification about FTA's expectations for the safety risk reduction program.

Many commenters, including transit agencies and an SSOA, asked FTA to clarify the relationship between the safety risk reduction program and FTA's existing SMS requirements. One commenter recommended that FTA clarify that the safety risk reduction program is a prescribed example of the Safety Risk Management (SRM) process under SMS. Another commenter argued that if the safety risk reduction program is just a component of the SRM process, then FTA should consider including it in the SRM section of the regulation (§ 673.25). Relatedly, two commenters requested that FTA clarify the difference between safety risk reduction and safety risk mitigation.

Response: FTA appreciates the comments identifying the connection between the safety risk reduction program and a transit agency's SMS processes. FTA agrees that a safety risk reduction program operates within an agency's SMS to support efforts to manage safety. FTA clarifies that it does not intend for safety risk reduction programs to exist outside of or separate from a transit agency's SMS.

In the NPRM, FTA proposed that all safety risk reduction program requirements would be in a distinct section of the regulation (§ 673.20). In response to comments, FTA has determined that this organization creates confusion by obscuring the program's relationship with SMS. To clarify this understanding and to ensure the consistent application of SMS processes, FTA has removed § 673.20 from the final rule and has relocated these provisions to other sections of the regulation, including the Safety Risk Management and Safety Assurance sections. FTA believes this change reinforces that a safety risk reduction program is not separate from SMS and that required safety risk reduction program elements and activities should operate within the Safety Risk Management and Safety Assurance components of SMS.

Accordingly, provisions regarding identifying mitigations for the safety risk reduction program are now located in the Safety Risk Mitigation section of the regulation at §§ 673.25(d)(3) through (d)(6). Provisions regarding continuous improvement requirements for the safety risk reduction program are now located in the Safety Assurance section at §§ 673.27(d)(1) through (d)(3).

In addition, FTA has located the provisions setting forth the general elements of the safety risk reduction program to § 673.11(a)(7). FTA believes that this is the most appropriate location because § 673.11 sets forth the elements that a transit agency's ASP must contain. As mentioned previously, the safety risk reduction program must be in the ASP per 49 U.S.C. 5329(d)(1)(I).

3. Safety Performance Targets

General

Comments: Several commenters, including an FTA webinar participant, requested additional guidance on how Safety Committees set safety performance targets for the safety risk reduction program. One commenter asked that FTA set specific guidelines for how to set targets. Another commenter recommended that Safety Committees should advise the transit agency on safety performance targets but should not set them, given that the targets have financial consequences for the transit agency if they are missed. One commenter argued that Safety Committee deadlocks or setting unattainable targets could require transit agencies to spend funding on mitigations that are inappropriate or outside of an agency's budget.

Several comments pertained to approval of safety risk reduction program performance targets. One commenter urged FTA to require that the Accountable Executive approve the performance targets. One commenter stated that both labor and management should certify their satisfaction with the safety performance targets, as well as whether the targets have been met. A separate commenter stated that FTA should require management to adopt any safety performance targets that the Safety Committee sets.

Another commenter noted that setting safety performance targets to reduce vehicular and pedestrian accidents involving buses through the safety risk reduction program would require data from local and State highway agencies and railroad companies. The commenter stated that this would add considerable burden but would be effective and would increase interagency cooperation.

Response: FTA appreciates that Safety Committees will need to work carefully to develop safety performance targets that are reasonable and attainable. Although FTA does not believe rulemaking is the appropriate forum for additional guidance, it will consider issuing technical assistance on setting safety performance targets in the future. Further, as required by statute, FTA defines required safety performance measures for the safety risk reduction program in the National Safety Plan.

FTA notes that per 49 U.S.C. 5329(d)(4), the Safety Committee is the entity required by statute to set the safety performance targets for the safety risk reduction program. The Safety Committee's role is not merely to ''advise'' on the performance targets, but rather to set them.

FTA acknowledges the comments recommending FTA establish additional requirements for approval of safety performance targets for the safety risk reduction program. FTA appreciates the recommendations and has carefully considered each but declines to make any changes in response. FTA notes that, pursuant to 49 U.S.C. 5329(d)(1)(F) safety performance targets must be included in the ASP, which is then approved by the Safety Committee and transit agency's Board of Directors or equivalent entity. This approval process incorporates the perspectives of both frontline transit worker and transit agency management representatives, as well as the Board of Directors. Because the PTASP regulation requires the ASP to undergo annual review and approval, and Safety Committee approval of the ASP is part of the annual review and approval process, FTA does not believe that an additional approval process for safety performance targets is necessary. In addition, FTA believes that the equal representation of labor and management on the Safety Committee sufficiently addresses the commenter's concern that the Safety Committee might set unattainable performance targets. FTA also notes that the safety set-aside is a minimum amount that a transit agency must spend on safety related projects.

As discussed in section II.F.5 of this preamble, the rule does not establish Accountable Executive veto power over the contents of the ASP. The Accountable Executive is ultimately responsible for carrying out the ASP that has been approved by the Safety Committee and the transit agency's Board of Directors, including safety performance targets.

In response to the comment that data would be required from local and State highway agencies and railroad companies to set safety performance targets, FTA notes that the required safety performance measures for the safety risk reduction program are defined in FTA's National Safety Plan and only require data that transit agencies are already required to report to the NTD. A transit agency will not need to gather additional data from local and State highway agencies and railroad companies to set safety performance targets for these required measures.

Three-Year Rolling Average

Comments: Several comments pertained to the requirement to set safety performance targets for the safety risk reduction program based on a three-year rolling average of NTD data. One of these commenters recommended that Safety Committees should simply be given the three-year rolling average instead of establishing the safety performance target, arguing that there is no need for the Safety Committee to establish the target under FTA's proposed language. This commenter further asked whether the Safety Committee is permitted to select a target higher or lower than the three-year rolling average. Two commenters suggested that FTA encourage Safety Committees to use existing data from other processes, such as SSOA and internal agency reviews, to determine whether a transit agency has made progress toward meeting its safety performance targets.

Three commenters expressed concern regarding setting targets using a three-year rolling average of NTD data when the industry has not previously tracked the related metrics or has tracked the metrics under different thresholds. One of these commenters urged FTA to communicate to SSOAs that transit agencies do not need to set safety performance targets for the safety risk reduction program until they have three years of NTD data. Two commenters recommended that FTA require agencies to report data based on historical NTD assault definitions until three years of data under the new NTD ''assault on a transit worker'' definition is available. One of them expressed that transit agencies should not compare assault data using more than one metric, as this could lead to inaccuracies. Another commenter noted that the public might oppose an agency setting a fatality target higher than zero based on a 3-year rolling average of NTD data; however, setting a target at zero might be unattainable.

Response: FTA appreciates the feedback received by commenters regarding the statutory requirement for Safety Committees to set safety performance targets for the safety risk

reduction program using a three-year rolling average of NTD data. The statute requires at 49 U.S.C. 5329(d)(4)(A) that Safety Committees set these targets ''using a 3-year rolling average of the data submitted'' to the NTD. FTA interprets this to mean Safety Committees must base their target on the three-year rolling average. To reflect an annual reduction, the safety performance target must be set below the three-year rolling average. However, Safety Committees have flexibility regarding the amount of annual reduction defined by their targets, as long as the methodology uses a three-year rolling average of data reported to the NTD and the targets reflect an annual reduction. For example, a Safety Committee may decide to set a target that is a 5% reduction from the previous three-year rolling average. Alternatively, a Safety Committee may set a target that represents an annual reduction of 10 injuries from the previous three-year rolling average. FTA therefore declines to adopt a requirement for the Safety Committee merely to be ''given'' the 3-year rolling average as the target. This would undermine the Safety Committee's statutory role in setting these targets and be contrary to the statute.

In response to the commenters that suggested that FTA encourage Safety Committees to use existing data from other processes to support safety performance measurement, FTA agrees that a range of monitoring techniques can be useful for assessing progress towards reaching established safety performance targets, including existing processes identified by the commenter such as internal safety reviews and SSOA reviews. FTA notes that § 673.19(d)(3)(iii) establishes the responsibility for Safety Committees to identify safety deficiencies, including any instance where the transit agency did not meet an annual safety performance target set for the safety risk reduction program. Transit agencies and their Safety Committees define the processes they will use to monitor safety performance and progress toward targets and instances where the agency does not meet an established safety performance target.

FTA appreciates that several transit agencies may not previously have reported certain metrics and therefore do not have three years of historical NTD data on which to base their safety performance targets. FTA proposed in the NPRM that Safety Committees will not be required to set safety performance targets for the safety risk reduction program until the agency has been required to report three years of data to the NTD corresponding to such performance measure. FTA is adopting this proposal in the final rule without change. FTA also intends to communicate this to transit agencies and SSOAs through guidance and technical assistance.

FTA acknowledges the two commenters that recommended FTA require agencies to report data based on historical NTD definitions until three years of data under the new NTD ''assault on a transit worker'' definition is available. As explained above, this final rule incorporates the statutory requirement that Safety Committees use a three-year rolling average of data reported to the NTD. Therefore, target setting for a safety risk reduction program performance measure would begin only once an agency has been required to report data to the NTD for three years corresponding to such performance measure. In response to the comment about public perception of a non-zero safety performance target, FTA notes that Safety Committees are statutorily required to set safety performance targets using a three-year rolling average of data reported by the transit agency to the NTD and that this may mean establishing safety performance targets that are zero or non-zero.

Annual Reduction

Comments: Some comments related to FTA's statement in the preamble of the NPRM that safety performance targets for the safety risk reduction program must reflect an annual reduction. One commenter asked whether setting a target that reduces the rate of increase would count as a ''reduction.''

Two commenters noted that safety performance typically ebbs and flows, particularly at smaller transit agencies. These commenters argued that some variation is mere ''noise,'' thus agencies should not be expected to have their safety performance targets reflect a continual reduction every year. One of these commenters stated that requiring an annual reduction might incentivize transit agencies to underreport safety events to the NTD. In addition, this commenter expressed concern that SSOAs and FTA might use this requirement as a justification to develop corrective action plans or other enforcement action.

Another commenter expressed confusion about FTA's statement in the NPRM that Safety Committees have flexibility to determine the amount of annual reduction defined by the targets, stating that this seems inconsistent with FTA's role in establishing performance measures through the National Safety Plan.

Response: In response to the commenter that asked whether setting a target that reduces the rate of increase would count as an annual ''reduction'' for purposes of the target setting requirement, FTA notes that reducing the rate of increase does not necessarily result in an actual reduction. Therefore, a target that uses a reduction in the rate of increase would not necessarily meet the requirement to establish a target that requires an actual reduction. As described earlier, the safety performance targets set by the Safety Committee for the safety risk reduction program must reflect an annual reduction in the associated safety performance measure. However, FTA agrees that safety performance typically ebbs and flows, particularly at smaller transit agencies and notes that failure to meet a safety performance target set for the safety risk reduction program does not reflect a failure of safety management at the transit agency. Rather, the safety risk reduction program helps direct safety resources based on safety performance.

FTA acknowledges the commenter that raised a concern that requiring an annual reduction could incentivize transit agencies to underreport safety events to the NTD. All transit agencies that are recipients or subrecipients of section 5307 funds are statutorily required to submit data to the NTD in uniform categories. Failure to report data in accordance with NTD requirements may result in a transit agency being ineligible to receive certain funding under 49 U.S.C. chapter 53.

This final rule does not establish any SSOA safety performance measurement requirements or requirements relating to corrective action plans or SSOA enforcement. FTA encourages the commenter to refer to 49 CFR part 674 for SSO Program requirements. However, FTA notes that this final rule does not limit or restrict existing FTA or SSOA enforcement authority.

FTA acknowledges the commenter that expressed confusion about FTA's statement in the NPRM that Safety Committees have flexibility to determine the amount of annual reduction defined by the targets. The statute requires Safety Committees to set safety performance targets for the safety risk reduction program requirements ''using a 3-year rolling average of the data submitted'' to the NTD. FTA interprets this to mean Safety Committees do not have to set a target that matches the three-year rolling average, but that they must base their target on this average. For example, a

Safety Committee may decide to set a target that is a 5% reduction from the previous three-year rolling average. FTA notes that the Safety Committee's role in setting performance targets is different from FTA's role in establishing the safety performance measures through the National Safety Plan. The Safety Committee must set targets for the measures that FTA defines, but it has flexibility when setting these targets, as discussed above.

Timing of Target Setting

Comments: A few comments pertained to the timing of setting safety performance targets for the safety risk reduction program. One commenter asked FTA to explain its reasoning for requiring these safety performance targets to be set on an annual basis, noting that certain actions to meet safety performance targets could take well over a year to implement and monitor. Another commenter asked FTA to clarify that Safety Committees set forward-looking targets (*i.e.,* for the following year). The commenter stated that the ASP approval timeline for many agencies is in December, so a requirement to set targets for a year in which an ASP is approved is nonsensical.

Response: FTA appreciates that policies, procedures, or mitigations put in place to help a transit agency achieve a safety performance target may become more effective over time and that a transit agency may not see the full safety performance benefit within one calendar year. However, FTA believes that an annual assessment of safety performance targets is appropriate. This allows transit agencies to monitor their progress, even when their progress may continue over multiple years. FTA disagrees with the perspective that because safety performance targets are forward-looking, safety performance targets cannot be set in the same year as an ASP is reviewed. FTA expects an ASP to be reviewed, updated as necessary, and approved (if necessary) every year. FTA also expects the Safety Committee of a large urbanized area provider to set safety performance targets for the safety risk reduction program every year. Transit agencies may establish ASP update schedules that coincide with Safety Committee target setting schedules as they see fit.

4. Safety Risk Mitigations

Comments: FTA received several comments regarding the safety risk mitigation process for the safety risk reduction program, including one comment during an FTA webinar expressing confusion about the requirements.

A labor organization stated that FTA's proposed language in § 673.20(a)(1), which sets forth the two statutory areas that must be included in a safety risk reduction program, is insufficient because it requires programs to merely ''address'' those two topics. This commenter and one additional commenter urged FTA to require transit agencies to set forth in their safety risk reduction programs specific actions that the transit agency will take, as recommended by the Safety Committee, to address the mitigation of vehicular and pedestrian safety events involving transit vehicles, and the mitigation of assaults on transit workers. It also requested that these specific actions include project timelines.

One transit agency opposed the identification of the two areas in § 673.20(a)(1), stating that FTA's identification of safety concerns conflicts with SMS and an agency's Safety Risk Management process. This commenter recommended that FTA either delete the reference to the two areas or revise the provision to allow the transit agency to identify the top hazards for the safety risk reduction program.

Several commenters discussed whether transit agencies should be required to implement safety risk mitigations for the safety risk reduction program that are identified and recommended by the Safety Committee.

Several commenters opposed FTA's proposed language at § 673.20(a)(4), which would require the Accountable Executive to implement certain mitigations recommended by the Safety Committee but allowed the Accountable Executive to decline to do so if they determine the mitigation will not improve the agency's overall safety performance. FTA received two comment letters from certain members of Congress stating that allowing the Accountable Executive to decline a safety risk reduction program mitigation recommended by the Safety Committee is contrary to Congressional intent in enacting the Bipartisan Infrastructure Law. These members of Congress urged FTA to remove this language, asserting there is no statutory authority for transit agency management to ignore or reject elements of an approved ASP, including safety risk mitigations for the safety risk reduction program identified by the Safety Committee. Several labor organization commenters expressed similar views and stated that transit agencies must implement all safety risk mitigations for the safety risk reduction program identified by the Safety Committee.

Four commenters expressed concern regarding the proposed requirement for the Accountable Executive to ''consider'' specific safety risk mitigations, as proposed at §§ 673.20(a)(2) and (a)(3). One commenter argued that this does not go far enough and urged FTA to require agencies to implement these mitigations when directed by the Safety Committee. Of these commenters, three supported their view by asserting that the safety risk reduction program is included in the ASP. Thus, when an ASP is approved, safety risk reduction program safety risk mitigations are approved as well.

Other commenters, including transit agencies and a transit industry association, opposed proposed § 673.20(a)(4) because it stated that the Accountable Executive ''must'' implement one or more of the mitigations recommended by the Safety Committee. Arguments raised by these commenters include that the provision is (1) too prescriptive, (2) overrides the agency's existing SMS and safety risk management process, (3) impinges upon the relationship between RTAs and SSOAs, (4) exceeds statutory requirements, and (5) diminishes the authority of the Accountable Executive. These commenters argued that the transit agency and Accountable Executive should not be required to implement Safety Committee recommendations, with one stating that mitigation implementation should be in accordance with the agency's hazard matrix. One commenter recommended replacing the word ''must'' with ''shall consider.''

Two commenters expressed that requiring the consideration of specific mitigations in the safety risk reduction program, as proposed at §§ 673.20(a)(2) and (a)(3), is inconsistent with SMS principles and will cause SMS to be less scalable and flexible. One of these commenters stated that the identification of two safety concerns and specific safety risk mitigations is inconsistent with data-driven risk assessment. The other commenter stated that a transit agency should have flexibility to determine mitigations based on its SMS processes. This commenter also asked FTA to clarify how it will gauge compliance with the requirement, urging FTA not to find an agency non-compliant if a mitigation is not appropriate for the agency's unique operating characteristics. Another commenter expressed concern that the mitigations mentioned in this provision are not readily available and require

significant testing to be fully operational, arguing that there are no accepted standards for these technologies.

One commenter observed that the preamble to the NPRM stated that transit agencies must consider mitigations related to assault mitigation infrastructure and technology in any type of transit vehicle and in transit facilities, but § 673.20(a)(3) only included ''transit vehicles.''

Response: FTA acknowledges the large number of comments summarized above related to requirements for safety risk mitigations resulting from the safety risk reduction program. FTA has reviewed and thoroughly considered all comments received.

FTA notes that the two program areas for the safety risk reduction program identified in § 673.20(a)(1) are statutorily required. FTA therefore declines to adopt the suggestion to delete or revise them. As described in section II.G.2 of the preamble above, FTA is adopting the provision originally proposed at § 673.20(a)(1) but has relocated it to § 673.11(a)(7).

FTA did not state explicitly in the NPRM that mitigations for the safety risk reduction program are included in the ASP. However, FTA agrees with commenters that this is what the statute requires. Specifically, 49 U.S.C. 5329(d)(1) sets forth the required elements of a transit agency's ASP. This includes the safety risk reduction program at 49 U.S.C. 5329(d)(1)(I). This provision further requires that the safety risk reduction program include mitigations, including (1) measures to reduce visibility impairments for bus operators that contribute to accidents, including retrofits to vehicles in revenue service and specifications for future procurements that reduce visibility impairments; and (2) the deployment of assault mitigation infrastructure and technology on buses. FTA therefore understands that per 49 U.S.C. 5329(d)(1)(I), the ASP must include the safety risk reduction program, which in turn must include mitigations. To harmonize the regulation with the statutory requirement, and in response to comments, FTA has added §§ 673.11(a)(7)(iv) and 673.25(d)(5) to the regulation. Together, these provisions convey that for large urbanized area providers, the ASP must include mitigations for the safety risk reduction program, including mitigations relating to vehicular and pedestrian safety events involving transit vehicles or assaults on transit workers, when identified and recommended by a Safety Committee based on a safety risk assessment. FTA notes that this is consistent with the standard SRM process in § 673.25(d)(1), in which safety risk mitigations are identified when they are ''necessary as a result of the agency's safety risk assessment to reduce the likelihood and severity of the consequences.'' However, FTA does not agree that the ASP must also include specific project timelines for carrying out these mitigations. Transit agencies may include timelines but are not required by statute or regulation to do so.

FTA appreciates the numerous comments discussing whether the transit agency must implement the safety risk reduction program mitigations that the Safety Committee recommends. FTA proposed at § 673.20(a)(4) of the NPRM that the Accountable Executive must implement one or more mitigations related to assaults and injuries to transit workers when recommended by the Safety Committee based on a safety risk analysis. This provision would have allowed the Accountable Executive to decline to implement the mitigation if the Accountable Executive determined it would not improve the agency's overall safety performance. FTA further stated in the NPRM preamble that the Accountable Executive could reject a mitigation due to its ''direction over the human and capital resources needed to develop and maintain the ASP and . . . ultimate accountability for the agency's safety performance.'' Upon thorough consideration of the comments received and re-analysis of 49 U.S.C. 5329(d)(1)(I), FTA has determined that this proposal is inconsistent with the statute. Accordingly, FTA is adopting several revisions to the safety risk reduction program provisions to harmonize the regulation with 49 U.S.C. 5329(d).

FTA agrees with the commenters who argued that the Accountable Executive must implement safety risk mitigations that are included in the ASP. Given that the statute requires a transit agency's ASP to include certain mitigations for the safety risk reduction program, the Accountable Executive must implement these mitigations. While FTA acknowledges that the Accountable Executive has discretion over the human and capital resources needed to carry out the ASP under § 673.5, the Accountable Executive does not have authority to decline to implement elements of an ASP that has been duly approved by the agency's Safety Committee and Board of Directors.

FTA therefore declines to adopt proposed § 673.20(a)(4), as it would have allowed the Accountable Executive to decline to implement certain mitigations in a manner that is inconsistent with the statute. FTA instead is adopting provisions at §§ 673.25(d)(6) and 673.23(d)(1) to set forth the responsibilities of the Accountable Executive regarding Safety Committee mitigations for the safety risk reduction program. Readers should refer to section II.F.5 of the preamble above for more discussion about these changes and the role of the Accountable Executive.

Given these revisions that FTA is adopting in this final rule, FTA does not agree that it is necessary to change the word ''consider,'' as proposed in §§ 670.20(a)(2)–(3). The word ''consider'' reflects the flexibility inherent in SMS. Transit agencies and their Safety Committees have flexibility to recommend the safety risk mitigations through the safety risk reduction program that are appropriate to their unique operating environments. FTA therefore substantively adopts the provisions originally proposed at §§ 670.20(a)(2)–(3) but has relocated them to §§ 673.25(d)(3)–(4), as explained in section II.G.2 of this preamble above.

FTA acknowledges the numerous commenters that opposed FTA requiring an Accountable Executive to implement safety risk mitigations recommended by the Safety Committee due to concerns regarding conflict with existing SMS principles, conflict with the authority of the Accountable Executive, reduced implementation flexibility, a lack of accepted standards for the associated technologies, and a lack of availability of mitigations. FTA notes that this requirement is established by statute. As discussed in the Safety Committee section above, 49 U.S.C. 5329(d)(1)(I) requires the ASP to include mitigations related to the safety risk reduction program, including (1) measures to reduce visibility impairments for bus operators that contribute to accidents and (2) the deployment of assault mitigation infrastructure and technology on buses when a safety risk assessment determines such measures would be effective at reducing associated safety events. FTA further notes that this final rule maintains the role of the Accountable Executive as having control or direction over the human and capital resources needed to develop and implement both the transit agency's ASP and the transit agency's Transit Asset Management Plan. Further, FTA notes that not all safety risk mitigations are required to be included in the ASP; only those identified by the Safety Committee through the safety risk reduction program.

FTA also acknowledges commenters that urged FTA to require transit agencies to implement all safety risk mitigations identified by the Safety Committee as part of the safety risk reduction program. FTA confirms that this final rule requires the implementation of all such safety risk mitigations. One of the Safety Committee's key responsibilities under 49 U.S.C. 5329(d)(5)(A)(iii) is ''identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment.'' As discussed in the Safety Committee section above, 49 U.S.C. 5329(d)(1)(I) requires the ASP to include mitigations related to the safety risk reduction program, including (1) measures to reduce visibility impairments for bus operators that contribute to accidents and (2) the deployment of assault mitigation infrastructure and technology on buses when a safety risk assessment determines such measures would be effective at reducing associated safety events.

The statute does not require an agency to include mitigations unrelated to the safety risk reduction program in the ASP. For any mitigations identified and recommended by the Safety Committee that are not included in the ASP, FTA is requiring at § 673.23(d)(1)(ii) that an Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigations that are recommended by the Safety Committee. In response to the comment regarding FTA's evaluation of compliance with requirements related to safety risk mitigations established through the safety risk reduction program, FTA notes that it monitors compliance with part 673 requirements through its existing triennial review process. However, FTA notes that transit agencies are required to allocate their safety set aside to address a missed safety performance target in the safety risk reduction program. This means that an agency will still be required to allocate resources in an instance of an inappropriate or ineffective safety risk mitigation that has not enabled the agency to meet the associated safety performance target. In this way, the requirements of the safety risk reduction program help support continuous improvement by ensuring that ineffective safety risk mitigations are addressed to support improvement in safety performance.

Regarding the inconsistency between the preamble and regulatory text in the NPRM regarding consideration of the deployment of assault mitigation infrastructure and technology, FTA notes that there was an error in proposed § 673.20(a)(3). FTA confirms that the preamble was correct: This requirement is intended to apply to both transit vehicles and transit facilities and assaults on transit workers are not limited to assaults that occur on transit vehicles. In response to comments, FTA has revised this provision to include the deployment of assault mitigation infrastructure and technology in transit facilities. FTA has relocated this provision from § 673.20(a)(3) to § 673.25(d)(4), as discussed in section II.G.2 of this preamble above.

5. Scope of the Safety Risk Reduction Program

Comments: One commenter recommended removing the word ''injury'' from the description of the safety risk reduction program in § 673.20(a) and safety performance targets in § 673.20(b). The commenter noted that the definition of safety event includes the term ''injury,'' so this deletion would avoid unnecessary repetition. Another commenter asked for clarification of this term and recommended that it be defined in the same way as in the NTD.

Response: FTA acknowledges that some safety events may result in injuries. However, FTA disagrees that addressing a reduction of safety events and injuries through the safety risk reduction program is duplicative. Trends in injuries and injury rates may occur distinctly from trends in safety events and safety event rates. For example, an agency that experiences more severe safety event outcomes may show increasing injury trends as compared to its safety event trends. Further, addressing a reduction of both accidents and injuries is required by statute at 49 U.S.C. 5329(d)(1)(I). FTA agrees with the commenter that adding a definition of ''injury' would be helpful and that this definition should match the one used by the NTD. FTA therefore is adding a definition of ''injury'' to § 673.5, which mirrors the definition used by the NTD.

6. Safety Set-Aside

General

Comments: Several commenters, including during an FTA webinar, asked for additional clarification and FTA guidance on using the 0.75% safety set-aside, as described in proposed § 673.20(e). Specifically, one commenter asked for clarification about whether the set-aside is always linked to a missed safety performance target. The same commenter noted that allocating the set-aside in the following year is problematic, given that section 5307 funds likely already are forecasted and budgeted in a multi-year plan. Two commenters asked whether the safety set-aside may be used to supplement existing safety projects or whether it must be used only for new safety projects. A participant at an FTA webinar asked whether the set-aside is limited to capital projects. One commenter asked for clarification on the lifespan of the set-aside, and whether it is subject to section 5307 grant requirements. One commenter stated that the set-aside amount might not be enough for small RTAs. Two commenters asked how transit agencies that are not direct recipients of section 5307 funds should meet the safety set-aside requirements, noting that such agencies do not determine the transit funding in their metropolitan areas.

Response: FTA notes that the safety set-aside is required under 49 U.S.C. 5329(d)(4). While FTA understands the concern regarding funding being forecasted in a multi-year plan, FTA does not have discretion to make the safety set-aside optional. Per 49 U.S.C. 5329(d)(4)(B), the safety set-aside is required of every recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more (a large urbanized area provider). This means that all large urbanized area providers must allocate at least 0.75% of section 5307 funds to safety-related projects eligible under section 5307. This requirement exists whether the agency misses a safety performance target under the safety risk reduction program or not. In an instance where a large urbanized area provider does not meet a safety performance target established under the safety risk reduction program, the safety set-aside must be used on projects that are reasonably likely to assist the agency in meeting the safety performance target in the future, per 49 U.S.C. 5329(d)(4)(C)–(D).

In response to the commenter that asked about safety set-aside application to existing safety projects, FTA notes that transit agencies may allocate the set-aside to ongoing safety initiatives rather than completely new safety projects under certain circumstances. The funds must be directed to safety-related activities. If the recipient is meeting the safety performance targets established under the safety risk reduction program, the recipient may continue to direct the set-aside funds to any safety-related purpose, including ongoing initiatives and new safety projects.

Some safety expenditures identified to satisfy the safety requirement may also be used to support the 1% requirement for security-related projects for the urbanized area (UZA) under 49 U.S.C. 5307(c)(1)(J) if the recipient can justify the expense as both a safety and a security expense. If the recipient is not meeting its established safety performance target(s) established under the safety risk reduction program, the recipient may continue to expend the safety set-aside on ongoing safety initiatives if those initiatives are reasonably likely to assist the recipient in meeting the missed target(s). If the ongoing initiatives are not reasonably likely to assist the recipient in meeting the applicable target(s), it may be necessary for the recipient to expend its set-aside funds on new safety projects.

FTA acknowledges additional comments requesting clarification on the safety set-aside and its applications. In response, FTA notes that the safety set-aside establishes a minimum amount of funds that must be allocated to safety-related projects eligible under section 5307. In response to the commenter that expressed concern that the safety set-aside for a small RTA may be insufficient, FTA notes that the set-aside is statutorily defined as ''not less than'' 0.75 percent of the transit agency's section 5307 funds. It is therefore a floor, not a ceiling. Transit agencies' safety-related spending is not limited to the amount of the safety set-aside, and transit agencies may spend section 5307 funds on safety projects that exceed the amount of the safety set-aside. Further, FTA notes that this final rule does not alter existing project funding eligibilities under section 5307; project expenses must be eligible for reimbursement under section 5307.

FTA acknowledges the comments regarding the application of safety set-aside requirements for large urbanized area providers that are not direct recipients, and notes that most large urbanized area providers receiving section 5307 funds are direct recipients. This final rule and the safety set-aside requirements apply to all operators of public transportation systems that are recipients and subrecipients of section 5307 funds. It is the direct recipient's responsibility to ensure its subrecipients are complying with the requirement, similarly to how they are required to ensure any subrecipients are complying with other requirements, such as civil rights or procurement requirements. FTA plans on developing technical assistance related to the safety set-aside, including application to subrecipients.

Missed Safety Risk Reduction Program Safety Performance Target

Comments: Two commenters opposed the requirement in § 673.20(e)(3) to allocate the set-aside when an agency misses a safety risk reduction program performance target. One stated that allocation should be based on an agency's Safety Risk Management process rather than a missed performance target set by the Safety Committee. The other commenter requested that FTA delete the word ''must'' to give agencies flexibility to use any funding source to address a missed target. Two commenters urged FTA to clarify that when an agency misses a safety risk reduction program performance target, it may allocate its set-aside toward ongoing or planned safety projects rather than just new ones. Both commenters noted that the results of safety investments might not be felt immediately.

In addition, several commenters sought clarification about set-aside allocation requirements in § 673.20(e)(3). One commenter asked whether an agency needs to specifically call out the missed safety performance target when it applies the set-aside and asked for guidance for section 5307 recipients to better understand how to address the requirement at the time of application for section 5307 funds. Three commenters asked whether the entire set-aside must be allocated to address a single unmet performance target or if a transit agency may use this funding to address additional safety performance targets. Two of these commenters noted that some safety risk mitigations, such as a bus stop relocation or a new Standard Operating Procedure, may cost significantly less than the set-aside and asked whether the entire set-aside nonetheless must be allocated in such cases.

One commenter asked who at the transit agency determines whether a project is ''reasonably likely to assist the agency in meeting the target'' when allocating the safety set-aside under § 673.20(e)(3). A separate commenter urged FTA to give transit agencies flexibility to identify eligible expenses that are ''reasonably likely'' to achieve safety performance targets, noting that some agencies may already be working to address the specific safety issue. One commenter asked FTA to clarify the meaning of a ''safety related project.''

Another commenter asked how allocating the set-aside will work when an agency continues to miss a safety performance target, but the set-aside has already been allocated to a mitigation addressing a previously missed target.

One commenter asked whether the use of safety set-aside funds in the following fiscal year referred to the Federal fiscal year or the transit agency's fiscal year.

Response: FTA acknowledges the two commenters that opposed the requirement in § 673.20(e)(3) to allocate the set-aside to specific projects when an agency misses a safety risk reduction program performance target. However, because these are statutory requirements under the Bipartisan Infrastructure Law, FTA does not have discretion to make them optional. Further, while statute links the allocation of the set-aside to specific projects when an agency misses a safety risk reduction program performance target, FTA notes that an agency's Safety Risk Management process plays a large role in the safety risk reduction program as the means to assess safety risk and implement safety risk mitigations. FTA notes that this final rule adopts requirements at §§ 673.25(d)(3)–(6) related to the use of Safety Risk Management processes for the safety risk reduction program.

FTA acknowledges the commenters seeking clarification on the ability for transit agencies to allocate the set-aside toward ongoing or planned safety projects rather than just new ones when an agency misses a safety risk reduction program performance target. FTA notes, as discussed in the section above, that transit agencies may allocate the safety set-aside to ongoing safety initiatives rather than completely new safety projects, to the extent they are reasonably likely to assist the agency in meeting the safety performance target in the future, as required by statute. If the initiatives are not reasonably likely to assist the recipient in meeting the applicable safety performance target(s), it may be necessary for the recipient to expend its set-aside funds on new safety projects.

FTA also acknowledges the commenter's question about addressing the set-aside at the time an agency is applying for section 5307 funds. Recipients must identify when they are using the safety set-aside to address a missed safety performance target in the applicable grant application in TrAMS; reserve funds to assist the recipient in meeting any missed targets; and document intended compliance with the requirement at the pre-award stage. Recipients should note the safety goal or safety-related project in a section 5307 grant's executive summary.

FTA appreciates the comments received requesting clarification about whether they must allocate the entire set-aside to address a single unmet performance target. FTA clarifies that if

the identified projects cost less than the transit agency's safety set-aside, the agency may use the remaining safety set-aside for other safety-related projects eligible under section 5307. Transit agencies with specific questions regarding the use of section 5307 funding should contact their FTA regional office.

FTA appreciates the comments received requesting clarification about who determines whether a mitigation is ''reasonably likely'' to assist the transit agency in meeting the safety performance target in the future. FTA notes that § 673.27(d)(3)(iii) requires the transit agency to allocate its set aside to projects reasonably likely to assist in meeting the missed safety risk reduction program safety performance target in the future. As described in § 673.19(d)(3)(i), one of the Safety Committee's statutory responsibilities is identifying and recommending safety risk mitigations, including safety risk mitigations associated with any instance where the transit agency did not meet a safety performance target for the safety risk reduction program. FTA interprets the identification of safety risk mitigations by the Safety Committee under § 673.19(d)(3)(i) to mean that the Safety Committee under their authority may identify mitigations that are reasonably likely to assist in meeting the missed safety risk reduction program safety performance target. FTA also notes that under the agency's Safety Risk Management process, sources outside of the Safety Committee may also identify safety risk mitigations, such as through a transit agency's safety department.

FTA acknowledges the commenter's question about an agency that continually misses a safety performance target. FTA notes that the safety set-aside is calculated annually based on a transit agency's section 5307 funding. If an agency fails to meet a safety performance target under the safety risk reduction program for a second year, the agency must again use its safety set-aside for safety risk mitigations reasonably likely to assist the transit agency in meeting the target in the future. FTA clarifies that the term ''fiscal year'' in this final rule refers to the Federal fiscal year.

FTA is adopting the proposed provisions relating to the safety set-aside, but has relocated them from § 673.20(e) to § 673.27(d)(3), as explained in Section II.G.2 of this preamble above.

Compliance

Comments: One commenter asked for clarification regarding the SSOA's role in overseeing the safety set-aside for RTAs under their jurisdiction. Another commenter asked how FTA will enforce the reallocation requirement and what FTA will review during triennial reviews relating to this requirement.

Response: This final rule does not establish new oversight requirements for SSOAs related to the safety set-aside. SSO Program requirements are established through part 674. Further, FTA notes that it plans to use its existing triennial review process to monitor compliance with part 673. Following regulatory updates, FTA modifies the Comprehensive Review Contractor's Manual used to conduct triennial reviews to address changes to review procedures based on new regulatory requirements. FTA publishes the Comprehensive Review Contractor's Manual upon update. For additional discussion about FTA oversight and enforcement, see Section II.D.2 of this preamble.

H. § 673.23—Safety Management Policy

Comments: FTA received one comment asking for clarification about how the proposal to require large urbanized area providers to establish the necessary authorities, accountabilities, and responsibilities for the management of safety for the Safety Committee is different from what transit agencies are currently doing.

FTA received comments related to the transit worker safety reporting program from several commenters. Commenters suggested that the requirements at § 673.23(b) should include requirements for anonymous reporting. These commenters expressed concern that transit workers are reluctant to report hazards due to fear of retaliation and without comprehensive near-miss reports, management cannot address root causes adequately.

One commenter asked for an example of when the transit worker safety reporting program should be used for an assault. Another commenter stated that FTA should clarify or more narrowly define the kinds of things that are meant to be reported to ensure transit agencies and workers have a clear understanding of what exactly should be reported. One commenter stated that it appeared that the proposed changes would impact Occupational Safety and Health Administration (OSHA) whistleblower requirements.

Response: FTA appreciates the question regarding the proposal at § 673.23(d) to require large urbanized areas providers to establish the necessary authorities, accountabilities, and responsibilities for the management of safety for the Safety Committee. FTA notes that § 673.23(d) sets forth the groups or individuals within a transit agency for which the agency must establish the necessary authorities, accountabilities, and responsibilities for the management of safety, as they relate to the development and management of the transit agency's SMS. While transit agencies may have already defined the Safety Committee's authorities, accountabilities, and responsibilities in their ASP in response to the enactment of the Bipartisan Infrastructure Law, this final rule adds the formal requirement to part 673 and establishes specific Safety Committee requirements in § 673.19, which impact the Safety Committee's authorities, accountabilities, and responsibilities.

As for the comments that asked FTA to require transit worker safety reporting programs to include anonymous reporting mechanisms, FTA declines to establish anonymity requirements at this time. As discussed in section II.M.3 of this preamble, FTA received several responses related to its request for information on confidential close-call/near-miss reporting systems. FTA thanks commenters for this feedback and is considering this information to inform future FTA action and technical assistance. FTA encourages transit agencies to consider providing ways for transit workers to anonymously report safety concerns and to consider participating in third-party confidential close-call reporting programs such as the Close Call Data Program operated by the Bureau of Transportation Statistics.[31]

In response to the commenter who asked for an example of when transit workers may use a transit worker safety reporting program to report instances of transit worker assault, FTA requires transit agencies at § 673.23(b) to establish transit worker safety reporting programs that allow transit workers to report safety concerns, ''including assaults on transit workers.'' FTA expects transit worker safety reporting programs to allow transit workers to report any instance of an assault on a transit worker as defined at § 673.5. FTA declines to more narrowly define the types of concerns that may be reported through a transit worker safety reporting program, as that may have the unintended impact of limiting safety concern reporting. In accordance with existing SMS implementation principles, FTA preserves the flexibility for transit agencies to establish the transit worker safety reporting processes that are most effective for their

[31] Bureau of Transportation Statistics (November 2023). ''Close Call Data Program.'' *https://www.closecall.bts.gov/.*

operating realities. Finally, FTA does not believe that any of the requirements in this final rule impact OSHA whistleblower requirements. FTA notes that nothing in this final rule is intended to limit a transit worker's ability to file an OSHA complaint. Further, § 673.23(b) requires transit agencies to develop and implement transit worker reporting programs that include protections for transit workers who report.

I. Section 673.25—Safety Risk Management

1. Hazard Identification

Comments: One commenter requested that FTA expand the list of sources of hazard identification under § 673.25(b)(2) to include data provided by the agency's Safety Committee and data provided by transit workers through the agency's transit worker safety reporting program.

One commenter requested that FTA clarify which data and information regarding exposure to infectious disease transit agencies must consider as part of the hazard identification process.

Response: FTA agrees that the list of required sources for hazard identification at § 673.25(b)(2) is not comprehensive, but it is not intended to be exhaustive. FTA notes that transit agencies can consider other sources such as Safety Committee recommendations. FTA will consider providing examples of additional hazard identification sources in technical assistance.

The Bipartisan Infrastructure Law establishes a requirement at 49 U.S.C. 5329(d)(1)(D) for ASPs to address minimizing exposure to infectious diseases, consistent with guidelines from the CDC or a State health authority. This statutory requirement is incorporated into the final rule at § 673.25(b)(2)(ii). Data and information regarding exposure to infectious disease could include, but are not limited to, CDC or State public health authority advisories, warnings, and recommendations for preventing the spread of infectious disease and best practices identified during the COVID–19 public health emergency.

2. Safety Risk Mitigation

For a discussion of Safety Risk Mitigations for the Safety Risk Reduction Program, please refer to Section II.G.4 of the preamble above.

Comments: Several commenters suggested that FTA consider requiring agencies to implement specific safety risk mitigations. One labor organization commenter recommended several safety standards regarding pedestrian safety, operator safety, passenger safety, bus mechanic safety, and health safety. The commenter also requested that FTA take specific actions in these areas, such as bolstering funding for police programs. Other suggestions from commenters include crowdsourced incident reporting systems to combat assaults on transit workers, video surveillance systems, and prohibitions on certain criminal offenders using transit.

One transit agency noted that FTA should fund pilot programs for fully enclosed bus operator compartments to mitigate assault risk. Relatedly, one commenter applauded FTA's pilot program for bus compartment redesign.

FTA also received a comment arguing that requiring agencies to ''address'' the role of the Safety Committee in § 673.25(d)(1) is inadequate. The commenter stated that FTA should require transit agencies to use their Safety Committees to identify safety risk mitigations and other safety improvements and require management to act on safety risk mitigation information and requests from the Safety Committee and implement these changes. This commenter also requested that FTA add the Safety Committee to proposed § 673.25(d)(2), which lists the sources that transit agencies must consider for safety risk mitigation. Another commenter recommended that transit agencies should use a threshold based on a hazard matrix to decide when safety risk mitigations should be submitted to the Accountable Executive to reduce the number of mitigations that must be reviewed by the Accountable Executive.

Response: FTA appreciates the recommendations. FTA's National Safety Plan includes a list of voluntary minimum safety standards and recommended practices to support mitigation of safety risk and to improve safety performance throughout the transit industry. FTA declines to adopt mandatory standards or mitigations through the PTASP rulemaking. FTA is considering the development of certain mandatory safety standards and will take commenters' suggestions into consideration to inform potential future FTA action, including through its Transit Worker and Public Safety rulemaking.

In response to the commenter who requested that FTA fund pilot programs for fully enclosed bus operator compartments, FTA notes that its Bus Operator Compartment Program supports research projects that protect operators from assault and improve their view of the road through innovative designs. FTA appreciates the comment in support of this program. FTA has launched the Transit Worker and Rider Safety Best Practices Research Project, which supports research to identify public safety concerns for transit workers and riders, determine the most effective mitigation strategies to minimize the safety risk associated with those safety concerns, and promote the implementation of those strategies.

FTA acknowledges the commenter that argued that FTA should require transit agencies to use their Safety Committee to identify mitigations and safety improvements, and that transit agency management implement safety risk mitigations that are recommended by the Safety Committee. The final rule incorporates at § 673.19(d) the statutory requirement that Safety Committees identify and recommend risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment. As discussed in Section II.G.4 of the preamble above, the final rule requires a transit agency's Accountable Executive to implement safety risk mitigations that have been included in the ASP, including mitigations for the safety risk reduction program recommended by the Safety Committee. The Accountable Executive does not have authority to decline to implement elements of an ASP that has been duly approved by the agency's Safety Committee and Board of Directors, including safety risk mitigations. FTA declines to add the Safety Committee to the list of required sources for safety risk mitigations in § 673.25(d)(2). FTA notes that the list is intended to be limited to external sources, such as FTA and oversight bodies such as an SSOA, and does not include internal transit agency sources such as a Safety Committee, subject matter experts, a transit agency's safety department, or other internal sources.

FTA declines to add a new requirement for transit agencies to use a threshold based on a hazard matrix to decide when safety risk mitigations should be submitted to the Accountable Executive because this would conflict with requirements at §§ 673.11(a), 673.25(d), and 673.27(d) regarding the role of the Safety Committee to identify and recommend safety risk mitigations and would reduce the flexibility afforded transit agencies to develop safety risk management processes based on the size, scope, and complexity of the transit agency.

J. Section 673.27—Safety Assurance

Comments: One commenter argued that it is unrealistic for FTA to require

all transit agencies to conduct continuous improvement and that this would cause SMS to be less scalable.

One commenter asked whether transit agencies must describe their annual safety performance assessment processes under § 673.27(d) in a document separate from the ASP. They further asked for additional information on FTA's expectations for this annual safety performance assessment, including whether the Safety Committee is required to play a role in the performance assessment. The commenter noted the Safety Committee members may lack the training or time to do so. One commenter argued that FTA should require large urbanized area providers to use their Safety Committee to conduct this safety performance assessment.

Another commenter asked whether the continuous improvement component of SMS occurs only after the full implementation of SMS and whether activities that a transit agency undertakes to improve SMS processes or safety performance during SMS implementation are considered to be continuous improvement.

Another commenter asked for clarification regarding the differences between Management of Change, System Modification, and Configuration Management. Similarly, another commenter asked FTA to clarify how to measure deficiencies for purposes of § 673.27(d)(4) and how to audit deficiencies. The commenter also argued that requiring transit agencies to integrate SSOA concerns into the continuous improvement process would make it difficult to prioritize risk management in a data-driven way without a process for appealing SSOA decisions. The commenter requested clarification as to whether there are limits to what the SSOA may require an RTA to include in the continuous improvement process.

Regarding the role of the Safety Committee in the Safety Assurance process, one commenter urged FTA to require transit systems to use their Safety Committees to identify ineffective, inappropriate, and poorly implemented mitigations and for the transit agency to implement any changes that the Safety Committee directs. This commenter also suggested that FTA should require the Accountable Executive to implement the plan to address deficiencies identified the annual safety performance assessments required under proposed § 673.27(d)(2).

Response: In the NPRM, FTA proposed to extend the continuous improvement requirements to small public transportation providers. This proposal was responsive to the Bipartisan Infrastructure Law, which requires large urbanized area providers to establish a Safety Committee and a safety risk reduction program that involves key elements of continuous improvement, such as safety performance target setting, safety performance monitoring, and the identification of safety deficiencies and safety performance issues. FTA believes that requiring the processes for small public transportation providers eliminates possible inconsistencies in enforcement among small public transportation providers: some small public transportation providers operate in large urbanized areas and are therefore subject to statutory requirements for continuous improvement. FTA appreciates that this may increase the level of effort required for small providers compared to the 2018 PTASP final rule. However, FTA does not agree that this is an unrealistic requirement for these transit agencies, or that it would make SMS less scalable. As noted in the NPRM, these providers already are required to set safety performance targets based on the safety performance measures established in the National Safety Plan. Based on the experience that these providers have gained by operating an SMS and carrying out required safety performance measurement activities, FTA expects they will be able to formalize these continuous improvement activities and document them in their ASP.

Transit agencies may describe their annual safety performance assessment process within their ASP or incorporate it in the ASP by reference. FTA agrees with the commenter that argued the Safety Committee must be involved in a large urbanized area provider's safety performance assessment process. One of the Safety Committee's key responsibilities established under 49 U.S.C. 5329(d)(5)(A)(iii) is ''identifying safety deficiencies for purposes of continuous improvement.'' FTA therefore adopts the proposed requirement at § 673.27(d)(1)(ii), which requires that the safety performance assessment process for large urbanized area providers address the role of the agency's Safety Committee. Transit agencies and their Safety Committee have flexibility to determine how to implement these continuous improvement activities. However, the Safety Committee's procedures must address how the Safety Committee will carry out this responsibility, as required by § 673.19(c)(9). FTA understands the concerns regarding Safety Committee training and refers readers to section II.F.4 above for discussion of this topic.

In response to the question regarding when continuous improvement requirements apply, FTA confirms that the continuous improvement requirements established at § 673.27(d) are not dependent on an agency reaching a specific level of SMS implementation.

In response to the commenter that asked for clarification regarding the differences between Management of Change, System Modification, and Configuration Management, FTA notes that ''management of change'' is a subheading under § 673.27 and a required process within the Safety Assurance component of an SMS. Given that ''system modification'' and ''configuration management'' are not found in part 673, FTA does not believe it is necessary to define these two terms in this final rule.

FTA appreciates the question from the commenter regarding the term ''deficiencies'' used in § 673.27(d). FTA notes that § 673.27(d) references two specific types of deficiencies: deficiencies in the transit agency's SMS and deficiencies in the transit agency's performance against safety performance targets. Deficiencies in the transit agency's SMS include concerns with the processes and procedures defined by the agency to carry out the transit agency's SMS. Deficiencies in the transit agency's performance against safety performance targets include instances where the transit agency fails to meet a safety performance target, including targets for the safety risk reduction program for large urbanized area providers. This final rule does not establish any audit requirements related to safety performance deficiencies. Defining requirements for an RTA to appeal the decisions of an SSOA are out of scope for this final rule. FTA notes that § 673.27(d)(1)(iii) requires an RTA's continuous improvement process to address any specific SSOA internal safety review requirements. FTA confirms that incorporation of internal safety review processes into the continuous improvement element of the ASP should not interfere with an agency's ability to prioritize safety risk.

FTA appreciates the comment recommending that FTA require transit systems to use their safety committees to identify ineffective, inappropriate, and poorly implemented mitigations. FTA agrees with the commenter and notes that it is a key statutorily required responsibility under 49 U.S.C. 5329(d)(5)(A)(iii) for the Safety Committee to identify ''mitigations or

strategies that may be ineffective, inappropriate, or were not implemented as intended.'' Accordingly, § 673.19(d)(3)(iii) of the final rule incorporates this statutory requirement. Further, FTA agrees with the commenter's perspective that the Accountable Executive is responsible for carrying out the plan to address safety performance deficiencies required under § 673.27(d)(4). FTA notes that § 673.27(d)(4) states that the plan must be carried out ''under the direction of the Accountable Executive.'' FTA reiterates further that per § 673.5, the Accountable Executive is ultimately responsible for carrying out the ASP. FTA believes additional clarification in the regulation is not necessary.

K. Section 673.29—Safety Promotion

1. Safety Training

Comments: One commenter asked whether the required safety concern identification and reporting training in § 673.29(a)(1) needs to be a standalone training course or if it could be incorporated into another element of the training program. Another commenter asked whether transit workers in an agency's Safety Department are considered ''directly responsible for safety'' for purposes of the PTASP training requirements, and whether FTA expects these workers to complete the Public Transportation Safety Certification Training Program (PTSCTP) under 49 CFR part 672,[32] as well as de-escalation training and safety concern identification and reporting training. Another commenter asked whether transit workers who have completed training under the PTSCTP must retake TSI training courses after the changes adopted in this final rule have been incorporated into the TSI training program.

Another commenter asked FTA to clarify the requirement to provide refresher training ''as necessary,'' and who decides whether refresher training is necessary. One commenter stated anecdotally that their transit agency has not provided safety-related refresher training in a decade and that some transit workers have not received safety training at all.

One commenter stated that FTA's proposed requirements are not specific enough to ensure agencies provide effective training. This commenter suggested that FTA require transit agencies to provide safety training to new hires within 30 days of their hiring date and annual refresher training to all frontline transit workers. It also suggested that FTA should require safety training to be interactive and for transit agencies to update training materials at least every five years. Another commenter suggested that training on how to report safety issues be included in the ASP.

One commenter expressed concern about the feasibility and cost of the new training requirements. Another commenter suggested that FTA provide technical assistance to assist agencies and their contractors implement training programs.

One commenter asked FTA to clarify the proposed requirement in § 673.29(a)(2) for large urbanized area providers to include maintenance workers in their safety training program, specifically whether this includes technical maintenance training. A separate commenter suggested that FTA create a certification program for mechanics regarding repair of electric and alternative fuel buses, and other new technologies. One commenter agreed with limiting FTA's proposal in § 673.29(a)(2) to large urbanized area providers. Conversely, one commenter suggested that FTA broaden this requirement to all transit agencies, including small transit providers and another commenter similarly suggested that FTA combine § 673.29(a)(1) with § 673.29(a)(2) for ease of implementation.

Response: Transit agencies may develop standalone training on safety concern identification and reporting, may incorporate this training into existing courses or programs, or both. FTA has not identified transit workers within a transit agency's Safety Department as automatically needing to be covered by the comprehensive safety training program. FTA gives agencies flexibility to define who is ''directly responsible for safety'' for the purposes of the PTASP safety training program. For questions related to PTSCTP applicability and requirements, FTA encourages individuals to refer to 49 CFR part 672.

Under § 673.29(a)(1), FTA requires transit agencies to implement refresher training ''as necessary'' for their comprehensive safety training program. FTA appreciates the recommendation to establish more specific requirements related to timelines for initial and refresher training. However, FTA believes that the flexibility regarding the type and frequency of refresher training ensures that agencies can establish requirements that are responsive to the size, scope, and complexity of their organization. For example, transit agencies may determine that annual refresher training is necessary for certain elements of their PTASP comprehensive safety training program. In response to the commenter who stated that their transit agency has not provided safety-related refresher training in a decade and that some transit workers have not received safety training at all, FTA notes that this final rule requires transit agencies to establish a comprehensive safety training program for all operations transit workers and transit workers directly responsible for safety in the transit agency's public transportation system. For large urbanized area providers, the agency's comprehensive safety training program also must include maintenance transit workers. FTA notes that SSOAs may implement specific refresher training requirements for RTAs under their jurisdiction.

FTA agrees that interactive training and routine updates of training materials are good practices for training programs. FTA declines to require these practices or the commenter's suggested timelines for initial and refresher training due to the flexibility afforded to transit agencies by the PTASP regulation, but FTA will consider these topics for future technical assistance. FTA appreciates the suggestion that it establish requirements for the development and delivery of training on how to report safety issues. FTA agrees that training on safety concern reporting and transit worker safety reporting processes at an agency are important. This final rule does not establish specific training requirements related to these individual program elements. However, FTA encourages transit agencies to document all such training as part of its comprehensive safety training program.

FTA acknowledges the comment that noted training requirements would add costs to the transit agency. FTA acknowledges that FTA-provided or FTA-recommended training is useful and has the potential to reduce burden on transit agencies, and FTA will consider the development of additional training resources to support these efforts.

The Bipartisan Infrastructure Law requires at 49 U.S.C. 5329(d)(1)(H)(ii) that large urbanized area providers include maintenance workers in their PTASP comprehensive safety training program. FTA appreciates the benefit transit agencies could receive from including maintenance transit workers in the comprehensive safety training program. Transit agencies that are not large urbanized area providers may include portions of their maintenance

[32] Public Transportation Safety Certification Training Program, 83 FR 34067 (2018) (Codified at 49 CFR part 672). *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-672.*

workforce in the comprehensive safety training program based on their agency's definition of ''transit workers directly responsible for safety'' or on a voluntary basis. However, FTA declines to extend the requirement to all agencies due to concerns related to industry burden.

Transit agencies do not need to include technical maintenance-specific training in their comprehensive safety training program. Rather, under § 673.29(a), large urbanized area providers must include maintenance transit workers in their comprehensive safety training program, which includes de-escalation training, safety concern identification and reporting training, and refresher training as necessary.

FTA appreciates the suggestion received from the commenter regarding the creation of a certification program for mechanics regarding repair of electric and alternative fuel buses, and other new technologies but notes that this final rule does not establish a new certification program and that existing safety certification training requirements are defined at 49 CFR part 672.

FTA declines to combine §§ 673.29(a)(1) and 673.29(a)(2). Given that these two paragraphs have different applicability, FTA believes that keeping them separate is the clearest way to articulate these requirements.

2. De-Escalation Training

Comments: One commenter requested general clarification about the de-escalation training requirement in § 673.29(a)(1). One commenter recommended that FTA establish a uniform de-escalation training curriculum and require all bus operators and transit workers who work directly in the field to receive de-escalation training, including retraining for operators who previously received this training. The commenter noted that some bus operators have not had de-escalation refresher training in years, and some have never had this kind of training at all. They also argued that transit agencies' existing de-escalation training sometimes is not thorough or is focused on the wrong type of transit workers.

One commenter expressed concern regarding the time and cost of de-escalation training. Another commenter requested technical assistance from FTA about the requirement, including a list of vendors on FTA's website similar to the COVID–19 resources page that FTA established during the pandemic. Another commenter argued that if RTAs are allowed to create their own de-escalation training, FTA should provide them with guidelines.

Two commenters recommended that FTA update the de-escalation training offered through NTI using current industry standards, with one commenter expressing concern that the current training course is outdated and ineffective.

A participant at an FTA webinar and several commenters expressed concern that the de-escalation training requirement is just a ''check-the-box'' exercise. One commenter stated that crime prevention and workplace violence are complex issues that frequently involve individuals experiencing mental health or substance abuse crises or repeat criminal offenders who do not respond to de-escalation techniques. It stated that the transit industry needs more than this rule change to address these issues.

Two commenters requested that FTA more clearly define which individuals must complete de-escalation training. This commenter also asked if a transit agency should consider any metrics for determining whether to provide de-escalation training and if it can use a threshold for requiring de-escalation training based on the number of assaults experienced at an agency per year.

One commenter stated that FTA did not specify how often de-escalation training must occur.

Response: FTA agrees that de-escalation training is beneficial for transit operators and any transit worker who works directly in the field. In § 673.29(a), FTA is requiring training programs to include de-escalation training for operations transit workers and transit workers directly responsible for safety, which could include transit workers directly in the field. For large urbanized area providers, this requirement also extends to maintenance transit workers. FTA worked with the National Transit Institute and the TSI to develop and provide Assault Awareness and Prevention and Violence in the Transit Workplace train-the-trainer and direct delivery courses.[33] While transit agencies are not required to use these courses as part of their training program, transit agencies may use these courses as part of their de-escalation training. FTA understands the concerns that this training course is outdated and ineffective and will consider updating the existing training and developing a voluntary curriculum for de-escalation training as part of its ongoing technical assistance. Fundamentally, FTA believes that de-escalation training has a significant ability to improve transit worker responses to challenging and potentially dangerous situations and does not view de-escalation training as a ''check-the-box'' exercise.

FTA acknowledges the commenter that noted refresher training requirements would add costs to the transit agency. FTA notes that FTA-provided or FTA-recommended training is useful and has the potential to reduce burden on transit agencies, and FTA will consider the development of additional refresher training resources to support these efforts. FTA acknowledges the SSOA commenter that argued that if RTAs are allowed to create their own de-escalation training, FTA should provide them with guidelines. In keeping with the inherent flexibility on an SMS, FTA believes that an RTA may develop its own de-escalation training and declines to establish specific guidelines that may restrict an RTA from addressing its own specific de-escalation needs. Further, FTA notes that SSOAs may establish additional requirements for the RTAs they oversee, including requirements related to the comprehensive safety training program.

FTA also appreciates the commenters that recommended FTA provide a list of vendors on FTA's website similar to the approach used by FTA to publish the COVID–19 resources toolkit, as well as guidelines to RTAs. FTA will consider these suggestions as it develops additional technical assistance related to de-escalation training.

FTA agrees that ongoing de-escalation training is beneficial. While FTA is not requiring a specific frequency for de-escalation training, FTA encourages transit agencies to establish a routine cadence for de-escalation training. FTA appreciates that transit workers may encounter a variety of situations, including ones involving individuals experiencing mental health or substance abuse crises, and believes that de-escalation training can help prepare transit workers to handle these situations. Transit agencies could consider using metrics, such as the number of assaults experienced per year, to determine how often to provide de-escalation refresher training.

3. Safety Communication

Comments: One commenter requested that FTA clarify when a transit agency must communicate hazards relevant to an employee's roles or responsibilities under § 673.29(b), and whether this requirement applies to all relevant hazards or only hazards that meet a determined risk rating. The commenter

[33] Federal Transit Administration (October 2023). ''FTA-Sponsored Training Courses.'' *https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses.*

also requested clarification on the required timing for informing employees of actions taken in response to safety reporting.

Three commenters stated that FTA should clarify the requirements for integrating the results of cooperation with frontline transit worker representatives and Safety Committee activities into the agency's overall safety communication process at § 673.29(b). One commenter requested further clarification on whether FTA is mandating routine communications to the organization regarding safety and what those communications must include.

One commenter asked whether these safety communication activities should be included in the ASP or in separate documentation.

Response: FTA is not establishing a specific threshold for determining which hazards and associated safety risk information relevant to a transit worker's roles and responsibilities a transit agency must communicate. Similarly, FTA has not established a time frame for informing transit workers of hazards, associated safety risk, or actions taken in response to reports received through a transit worker safety reporting program. FTA believes that the flexibility regarding these requirements ensures that agencies can establish processes that are responsive to the size, scope, and complexity of their organization. This final rule provides sufficient flexibility for transit agencies to make these determinations themselves.

FTA is not establishing more explicit requirements regarding minimum communication relating to frontline transit worker representatives and Safety Committees. In deference to the significant differences in scope and mechanisms for communication throughout the transit industry, FTA believes that transit agencies should have flexibility in this area. FTA will consider technical assistance on safety communication processes in the future.

Finally, FTA appreciates the question regarding whether these safety communication activities should be included in the ASP or in separate documentation. Under § 673.11(a)(2), a transit agency's ASP must document the processes and activities related to SMS implementation, which a transit agency may include or incorporate by reference. This includes the safety communication processes established under § 673.29(b). However, FTA does not expect transit agencies to document the actual communications in an ASP. Please note that each transit agency must keep these records for a minimum of three years consistent with the recordkeeping requirements in § 673.31.

L. Section 673.31—Safety Plan Documentation

Comments: One commenter stated that FTA should more clearly define the required documentation of the programs, policies, and procedures that the agency uses to carry out its ASP as stated in § 673.31. Another commenter requested FTA specify that a transit agency must maintain documents related to ASP approval.

Response: FTA notes that safety plan documentation is an existing requirement under the 2018 PTASP final rule. FTA disagrees that this section requires additional specificity, as the documentation of SMS processes and activities, will differ among transit agencies. Therefore, FTA declines to make any changes to the final rule in response to these comments. FTA provides technical assistance to transit agencies with questions about documentation requirements via the PTASP Technical Assistance Center (TAC).[34] As noted above, under § 673.11(a)(2), a transit agency's ASP must document the processes and activities related to SMS implementation, consistent with the recordkeeping requirements in § 673.31, which cover SMS processes and procedures, and results from SMS activities, including ASP approvals.

M. Other Topics

1. Assaults on Transit Workers

Comments: Several commenters expressed concern that the requirements of this rule do not go far enough to prevent assaults on transit workers. Commenters noted that assaults on transit workers are widespread and worsening and that FTA should take swift and decisive action to address assaults on transit workers. Several commenters expressed that FTA should immediately begin the study and attendant rulemaking required by Section 3022 of the Fixing America's Surface Transportation (FAST) Act to protect transit workers from attacks.

One commenter stated that, in many transit agencies, bus operators who leave the driver's seat to de-escalate a developing situation or to defend a passenger or themselves from an active assault are dismissed from their position. They stated that policies like these make operators feel vulnerable and powerless in the lead up to or during an assault. An additional commenter stated that, when an assault involving a transit worker and a passenger occurs, regardless of who initiated or actively participated in the assault, the driver is often punished and not the passenger.

One commenter stressed the importance of an Employee Assistance Program (EAP) for transit workers who are involved in assaults or other events, as well as access to paid time off to address physical and mental health needs following an event.

One commenter urged for increased Federal penalties for assaults on transit workers, specifically elevating the crime to a felony and banning offenders from using public transportation, noting that some state legal codes include passenger bans.

Response: FTA appreciates that some stakeholders may have desired this rulemaking to impose more specific requirements relating to assaults on transit workers. The PTASP rulemaking is one element of FTA's approach to addressing this important issue. The processes outlined in SMS and reinforced in this regulation are critical to the transit industry's response to assaults on transit workers. By following the processes of SMS, the transit industry can make effective changes at their agencies to reduce the incidence of assaults on transit workers.

FTA has also initiated a separate rulemaking on Transit Worker and Public Safety. This rule would establish minimum baseline standards and risk-based requirements to address transit worker and public safety based on the most current research and available information, including but not limited to, addressing the requirements of Section 3022 of the FAST Act. The purpose of this rulemaking is to reduce serious injury events and fatalities from assaults involving transit workers, passengers, and the public.

FTA appreciates that de-escalation and response to an assault are complicated in a transit environment, particularly when aboard a moving vehicle. FTA encourages transit agencies to work with their frontline transit workforce and Safety Committees as appropriate to identify policies and techniques that enable transit workers to respond in a safe and effective manner.

FTA agrees that EAPs can benefit transit workers and transit agencies after a traumatic event. While FTA is not requiring transit agencies to implement an EAP, transit agencies may voluntarily develop such a program to support their workforce. FTA has aggregated a list of mental health resources to support transit workers during challenging

[34] Federal Transit Administration (October 2023). ''PTASP Technical Assistance Center.'' *https://www.transit.dot.gov/PTASP.*

times.[35] FTA encourages transit agencies to share these online resources widely with their workers and with other transit agencies in their networks.

FTA notes that legal remedies such as increased Federal penalties for assaults on transit workers, elevation of assaults on transit workers to a felony, and banning offenders from using public transportation are outside the scope of FTA's authority.

2. Assaults on Transit Workers Data

Comments: FTA received several comments about data reporting on assaults on transit workers. One commenter recommended that FTA create a mandatory nationwide database for transit agencies to report assaults on transit workers, and for FTA to publish reports about the data on a regular basis. One commenter expressed concern that the new NTD requirement to report assaults on transit workers could result in the perception that the number of assaults on transit workers has increased significantly. The commenter recommended that FTA provide context regarding new reporting requirements when it makes this data publicly available.

One commenter stated that transit agencies should collect information from transit passengers who witness assaults on transit workers, noting that assaults may otherwise go unreported. Another commenter stated that some transit agencies are not keeping accurate records of the assaults that transit workers are experiencing. Other commenters expressed that assaults on transit workers are severely underreported. One comment requested clarification on whether assaults on transit workers data are safety data or security data.

One commenter also stated their transit dispatch ''tends to over-report'' and offered the example of an argument being reported as verbal assault. The commenter stated the data cleanup and training required under the rule as written would lead to a great administrative burden.

Response: FTA requires transit agencies that are recipients of certain Federal funding to report to the NTD on the financial, operating, and asset condition of transit systems. The NTD program publishes data products on a regular basis containing information and statistics, including statistics on transit safety. The NTD program serves as FTA's system for collection of assaults on transit workers data and ensures all associated reporting requirements are clarified. FTA's published safety data includes notes regarding NTD reporting threshold changes that may impact how data is interpreted. FTA notes that such information will be included in publicly available data related to assaults on transit workers, to the extent that it includes data reported prior to the NTD's implementation of the Bipartisan Infrastructure Law assault reporting requirements.

FTA appreciates the value of witnesses when investigating instances of assaults on transit workers. FTA encourages transit agencies to leverage witness information as possible to help inform investigative, safety reporting, and Safety Risk Management activities.

FTA appreciates the comments regarding the challenges of reporting assaults on a transit worker and questions about classification of assaults as safety events or security events. FTA acknowledges that assaults on transit workers historically have been severely underreported and that this has created challenges for remedying this issue. The new NTD assault reporting requirements enacted by the Bipartisan Infrastructure Law will help transit industry stakeholders better understand and address assaults on transit workers. FTA notes that the NTD has already established reporting requirements for assaults on transit workers. Nothing in this final rule changes those requirements or increases data collection or reporting burden related to assaults on transit workers. As explained in Section II.B.3 of the preamble above, the NTD communicates guidance to the NTD reporting community to clarify these reporting requirements. FTA refers readers to that section of the preamble for additional discussion of this topic.

3. Confidential Close Call/Near-Miss Transit Worker Safety Reporting Systems

In the NPRM, FTA requested information from stakeholders regarding their experience establishing confidential reporting methods for transit workers. FTA did not propose any new requirements on this topic in the NPRM. FTA received several responses relating to its request for information. FTA thanks commenters for this feedback and is considering this information to inform future FTA action and technical assistance.

N. Regulatory Impact Analysis

Comments: Several comments requested that FTA reevaluate the labor hour assumptions it used to estimate costs for regulated entities to meet the requirements of the rule.

For de-escalation training, one commenter recommended that FTA provide hours for agency personnel to provide and track the progress of such training. The commenter sought additional clarification about the de-escalation training estimates, including whether FTA is requiring 0.25 hours of annual de-escalation training.

For the Safety Committee requirement, one commenter claimed that the first-year estimates for HR managers and safety managers seemed too low. Another commenter claimed that the estimates only provided hours for six individuals, although Safety Committees at larger transit agencies might be much larger; it also did not account for the administrative burden of preparing meeting materials and minutes.

For continuous improvement, one commenter stated that the first-year hours for the Chief Safety Officer and Safety Manager do not fully account for the cost of developing and implementing continuous improvement. In addition, the estimates should include hours for the Accountable Executive.

For the safety risk reduction program, one commenter claimed that estimates do not accurately reflect the resources needed to develop and implement the program, given the number of safety events the commenter's agency experienced annually.

For frontline worker involvement with ASP, one commenter claimed that the estimates do not include frontline personnel and that the hour estimates are too low.

Finally, one comment stated the estimated costs are generally too low but did not identify specific issues.

Response: In response to comments, FTA reviewed and revised the labor hour estimates as detailed in Section IV. ''Regulatory Analyses and Notices'' below. The updated cost estimates reflect the revised labor hours. For annual de-escalation training, FTA is estimating a half-hour training every two years, for an average of 0.25 hours per year.

O. Regulatory Burden

Comments: One commenter opposed this rulemaking generally, arguing that it imposes too much regulation on the transit industry. Some comments expressed that the new PTASP requirements impose burden without additional funding. Two commenters stated that FTA should provide funding for transit agencies to meet these requirements, with one asking for

[35] Federal Transit Administration (May 2023). ''Mental Health Resources for Transit Workers.'' *https://www.transit.dot.gov/regulations-and-programs/safety/mental-health-resources.*

funding to be available without additional steps or grant applications. One commenter stated that some transit agencies may need to hire additional workers to meet PTASP requirements. They recommended that FTA provide relief from some requirements for smaller transit agencies. They also requested that FTA provide substantive technical assistance and resources to assist agencies comply with the final rule.

One commenter expressed concern that the proposed requirements are more prescriptive than the 2018 final rule and that this increases the burden on transit agencies, particularly small and mid-sized RTAs who also must comply with their SSOA's Risk-Based Inspection programs. They expressed concern that FTA's safety rulemakings have forced transit agencies to constantly evolve their safety programs to accommodate increasingly burdensome requirements and that FTA should provide a grace period for transit agencies to evaluate and implement staffing and resources needed to comply with the new requirements.

Response: FTA appreciates the comments received on the relative increase in costs related to this rule. FTA's cost-benefit analysis is based on the average estimated impact to transit agencies. The transit agencies that must comply with this regulation receive Chapter 53 funds and, with very few exceptions, receive section 5307 funds. Regarding the comment requesting funding be made available without additional steps or grant applications, FTA notes that agencies can use their existing section 5307 formula funds for eligible safety projects.

This final rule is implementing requirements statutorily mandated by Congress, and FTA has attempted to implement the statutory requirements by imposing the least burden on transit agencies. To minimize the de-escalation training burden on all transit agencies subject to part 673, FTA has made de-escalation training freely available to all transit agencies via the FTA-sponsored Assault Awareness and Prevention for Transit Operators courses offered by the National Transit Institute.[36] Regarding continuous improvement, under the PTASP rule currently in effect, small public transportation providers are already required to set safety performance targets. Based on the experience that the providers have gained by implementing SMS and carrying out required safety performance measurement activities, FTA expects that the providers will be able to formalize their continuous improvement activities and document them in their ASP. FTA intends to continue its existing PTASP technical assistance program and will consider assistance geared towards smaller providers in the future.

FTA disagrees that a ''grace period'' for part 673 implementation is necessary and notes that to the extent the final rule incorporates Bipartisan Infrastructure Law requirements, those requirements have been in effect since November 15, 2021.

III. Section-by-Section Analysis

Subpart A—General

673.1—Applicability

This section sets forth the applicability of the PTASP regulation. The regulation applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. chapter 53. FTA has deferred applicability to operators that only receive Federal financial assistance under 49 U.S.C. 5310 or 5311, or both 49 U.S.C. 5310 and 5311, and that do not operate a rail fixed guideway system.

673.3—Policy

This section explains that FTA is utilizing the principles and methods of SMS as the basis for this regulation and all other regulations and policies FTA has issued and will issue under the authority of 49 U.S.C. 5329. FTA's standards for SMS are flexible and scalable and may be tailored to the size and operating complexity of the transit operator.

673.5—Definitions

This section sets forth the definitions of key terms used in the regulation. Most notably, readers should refer to ''assault on a transit worker,'' ''safety event,'' ''safety performance target,'' and ''transit worker.''

Subpart B—Safety Plans

673.11—General Requirements

This section establishes general PTASP requirements.

Pursuant to 49 U.S.C. 5329(d)(1), this section requires each operator of public transportation subject to this rule to develop a Public Transportation Agency Safety Plan (ASP) consistent with this part. Section 673.11(a)(1) requires the ASP and subsequent updates be signed by the Accountable Executive. For large urbanized area providers, the Safety Committee must also approve the ASP, and any updates, followed by the transit agency's Board of Directors or equivalent entity. For all other transit agencies, the transit agency's Board of Directors or equivalent entity must approve the ASP.

Section 673.11(a)(2) requires the ASP to document the processes and activities related to SMS.

Section 673.11(a)(3) requires that ASPs must include annual safety performance targets based on the safety performance measures established under FTA's National Safety Plan. The ASP of a large urbanized area provider must also include safety performance targets for the safety risk reduction program.

Section 673.11(a)(4) requires the ASP to address all applicable requirements and standards of FTA's Safety Program.

Section 673.11(a)(5) requires each transit agency to establish a process and timeline for reviewing annually its ASP.

Section 673.11(a)(6) requires the ASP of each RTA to include or incorporate by reference an emergency preparedness plan, any policies and procedures relating to rail transit workers on the roadway, and policies and procedures related to the State Safety Oversight Agency's risk-based inspection program.

Section 673.11(a)(7) requires the ASP of each large urbanized area provider to include a safety risk reduction program for transit operations to improve safety by reducing the number and rates of safety events, injuries, and assaults on transit workers. The safety risk reduction program must address the reduction and mitigation of vehicular and pedestrian safety events involving transit vehicles, and the reduction and mitigation of assaults on transit workers. The safety risk reduction program must also include the safety performance targets set by the Safety Committee. These targets must be based on a three-year rolling average of the data submitted by the large urbanized area provider to the National Transit Database (NTD); for all modes of public transportation; and based on the level of detail the large urbanized area provider is required to report to the NTD. The Safety Committee is not required to set a target for a performance measure until the large urbanized area provider has been required to report three years of data to the NTD corresponding to such performance measure.

Finally, the safety risk reduction program must include or incorporate by reference the safety risk mitigations identified and recommended by the Safety Committee as described in § 673.25(d)(5).

[36] Federal Transit Administration (October 2023). ''FTA-Sponsored Training Courses.'' *https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses.*

Section 673.11(b) provides that a transit agency may develop one ASP for all modes of transit service, or it may develop separate ASP for each mode of service not subject to safety regulation by another Federal entity.

Section 673.11(c) requires each transit agency to maintain its ASP in accordance with the recordkeeping requirements of this Part.

Section 673.11(d) requires a State to draft and certify an ASP for a small public transportation provider that is located in that State. FTA notes a small public transportation provider may also be a large urbanized area provider and thus required to have an ASP with the attendant provisions, such as a Safety Committee and safety risk reduction program.

Section 673.11(e) exempts agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) from the requirement to develop an ASP for those modes of service.

673.13—Certification of Compliance

This section sets forth certification requirements. Section 673.13(a) lays out the requirement that a State's initial PTASP certification for a small transportation provider, or direct recipient's certification, must occur by the start of operations. This section also requires SSOAs to review and approve the ASP developed by a rail fixed guideway public transportation system. Section 673.13(b) requires the certification on an annual basis and that direct recipients must certify compliance on behalf of any subrecipients.

673.15—Coordination With Metropolitan, Statewide, and Non-Metropolitan Planning Processes

In accordance with 49 U.S.C. 5303(h)(2)(B) and 5304(d)(2)(B), section 673.15(a) requires that each State and transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process. Section 673.15(b) requires, to the maximum extent practicable, a State or transit agency to coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

Subpart C—Safety Committees and Cooperation With Frontline Transit Worker Representatives

Subpart C, ''Safety Committees and Cooperation with Frontline Transit Worker Representatives'' incorporates Bipartisan Infrastructure Law requirements for Safety Committees and cooperation with frontline transit worker representatives.

673.17—Cooperation With Frontline Transit Worker Representatives

Section 673.17 establishes requirements for transit agency cooperation with frontline transit worker representatives, as required by the Bipartisan Infrastructure Law. In § 673.17(a), FTA incorporates the statutory requirement that a large urbanized area provider must establish a Safety Committee. Section 673.17(b) incorporates the statutory requirement that a transit agency that is not a large urbanized area provider must develop its ASP, and subsequent updates, in cooperation with frontline transit worker representatives, as required by the Bipartisan Infrastructure Law. In this section, FTA also requires that such providers must include or incorporate by reference in the ASP a description of how frontline transit worker representatives cooperate in the development and update of the ASP.

673.19—Safety Committee

The Bipartisan Infrastructure Law requires that transit agencies serving a large urbanized area establish a Safety Committee that meets certain requirements.

Section 673.19(a) incorporates the statutory requirement that the Safety Committee be convened by a joint-labor management process and provides that the Safety Committee be appropriately scaled to the size, scope, and complexity of the transit agency.

Section 673.19(b) incorporates the statutory requirement that the Safety Committee consist of an equal number of frontline transit worker representatives and management representatives. This section also requires that the Safety Committee include frontline transit worker representatives from major transit service functions to the extent practicable.

Section 673.19(b) also incorporates the statutory requirement that the frontline transit worker representatives on the Safety Committee be selected by a labor organization representing the plurality of the frontline workforce. If a transit agency's frontline transit workers are not represented by a labor organization, the transit agency must adopt a mechanism to ensure that frontline transit workers select frontline transit worker representatives for the Safety Committee.

Section 673.19(c) requires each large urbanized area provider include or incorporate by reference in its ASP procedures about the composition, responsibilities, and operations of the Safety Committee. Of note are the requirements to include procedures related to how meeting agendas and notices will be developed and shared, and how meeting minutes will be recorded, maintained, and shared; the compensation policy for participation in Safety Committee meetings, procedures for reaching and recording decisions, and procedures for resolving disputes, such as the existing dispute resolution process at the agency.

Section 673.19(d) identifies statutorily required activities that the Safety Committee must take, including ASP review and approval, setting annual safety performance targets to support the safety risk reduction program, and support of SMS activities.

Subpart D—Safety Management Systems

673.21—General Requirements

This section outlines the SMS elements that each transit agency must establish in its ASP. Each transit agency must establish processes and procedures which include the four main pillars of SMS: (1) Safety Management Policy; (2) Safety Risk Management; (3) Safety Assurance; and (4) Safety Promotion. Each transit agency's SMS must be appropriately scaled to the size and complexity of the system.

673.23—Safety Management Policy

Section 673.23(a) requires the transit agency's Safety Management Policy to include a description of the transit agency's Safety Committee or approach to cooperation with frontline transit worker representatives, as applicable.

Section 673.23(b) directs each transit agency to establish and implement a process that allows transit workers to report safety concerns.

Section 673.23(c) requires that the Safety Management Policy be communicated throughout the transit agency's organization.

Section 673.23(d) requires the transit agency to establish the necessary authorities, accountabilities, and responsibilities necessary to meet its safety objectives, particularly as they relate to the development and management of the transit agency's SMS. Section 673.23(d)(1) requires each transit agency to identify an Accountable Executive and describes their role. Under § 673.25(d)(1)(i), the Accountable Executive of a large urbanized area provider must implement all safety risk mitigations for the safety risk reduction program that

are included in the ASP under § 673.11(a)(7)(iv). Under § 673.23(d)(1)(ii), the Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigation recommendations of the Safety Committee, consistent with requirements in §§ 673.19(d) and 673.25(d)(6).

Sections 673.23(d)(2)–(5) require each transit agency to designate a Chief Safety Officer or SMS Executive, Safety Committee (for large urbanized area providers), identify transit agency leadership and executive management, and designate key staff.

673.25—Safety Risk Management

Section 673.25(a) requires that each transit agency must develop and implement a Safety Risk Management (SRM) process for all elements of its system. The SRM process includes hazard identification, safety risk assessment, and safety risk mitigation.

Section 673.25(b) discusses hazard identification. Section 673.25(b)(1) requires a transit agency to establish processes to identify hazards and potential consequences. Section 673.25(b)(2) lists certain data that a transit agency must consider as a source for hazard identification, including data regarding exposure to infectious disease provided by the CDC or a State health authority.

Section 673.25(c) describes the requirements for safety risk assessments.

Section 673.25(d) discusses safety risk mitigation. Section 673.25(d)(1) requires a transit agency to establish methods or processes to identify safety risk mitigations necessary as a result of the transit agency's safety risk assessment. For large urbanized area providers, these methods or processes must address the role of the agency's Safety Committee.

Section 673.25(d)(2) requires transit agencies to consider guidance provided by an oversight authority, if applicable, and FTA as a source for safety risk mitigation as well as CDC or State health authority guidelines to prevent or control exposure to infectious diseases.

Sections 673.25(d)(3) and (d)(4) require each large urbanized area provider and its Safety Committee to consider specific safety risk mitigations related to vehicular and pedestrian safety events involving transit vehicles and assaults on transit workers when identifying safety risk mitigations for the safety risk reduction program, including when addressing a missed safety risk reduction program safety performance target. Section 673.25(d)(3) requires consideration of operator visibility impairment mitigations for any type of transit vehicles, not just buses. Similarly, § 673.25(d)(4) requires consideration of assault mitigation infrastructure and technology in any type of transit vehicle and in transit facilities, not just buses.

Section 673.25(d)(5) requires a large urbanized area provider to include or incorporate by reference in its ASP, as required by § 673.11(a)(7)(iv), any safety risk mitigations recommended by the Safety Committee based on a safety risk assessment as part of the safety risk reduction program. This includes mitigations relating to vehicular and pedestrian safety events or assaults on transit workers.

Section 673.25(d)(6) provides that if the Safety Committee recommends a safety risk mitigation unrelated to the safety risk reduction program and the Accountable Executive decides not to implement the safety risk mitigation, the Accountable Executive is required to prepare a written statement explaining their decision. The Accountable Executive must submit and present this explanation to the Safety Committee and Board of Directors, or equivalent entity.

673.27—Safety Assurance

Section 673.27(a) requires transit agencies to develop and implement a safety assurance process.

Section 673.27(b) requires transit agencies to establish safety performance monitoring and measurement activities. This section requires that large urbanized area providers address the role of the Safety Committee. This ensures that the SMS of these transit agencies incorporates the Safety Committee's statutorily required responsibilities relating to safety performance monitoring and measurement.

Section 673.27(c) requires transit agencies to establish a process for identifying and addressing changes to the system or operating conditions.

Section 673.27(d) addresses the requirement of continuous improvement. This requirement applies to all transit agencies subject to part 673. Section 673.25(d)(1) requires that a transit agency must establish a process to assess its safety performance annually. This process must include identifying deficiencies in the transit agency's SMS and in the agency's safety performance against its safety performance targets, including safety performance targets required for all transit agencies at § 673.11(a)(3). For large urbanized area providers, the continuous improvement process must address the role of the transit agency's Safety Committee and include the identification of deficiencies in the transit agency's performance against annual safety performance targets set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program. Additionally, this section requires that RTAs must address internal safety review requirements established by SSOAs as part of the continuous improvement element of Safety Assurance.

Sections 673.27(d)(2) through (d)(4) address continuous improvement requirements related to safety performance targets as part of a large urbanized area provider's safety risk reduction program. Section 673.27(d)(2) requires the large urbanized area provider to monitor safety performance against the annual safety targets. Section 673.27(d)(3) identifies the requirements for a large urbanized area provider that does not meet an annual safety performance target set by the Safety Committee for the safety risk reduction program. Specifically, the transit agency must: (1) assess the associated safety risk; (2) mitigate associated safety risk using the safety risk mitigation process under § 673.25(d) and include those mitigations in the plan described in § 673.27(d)(4); and (3) allocate its safety set-aside in the following fiscal year to safety related projects that are reasonably likely to assist in meeting the safety performance target.

Section 673.27(d)(4) requires a transit agency to develop and carry out, under the direction of the Accountable Executive, a plan to address any deficiencies identified through the safety performance assessment.

673.29—Safety Promotion

This section requires each transit agency to establish competencies and training for all agency employees directly responsible for safety, and to establish and maintain the means for communicating safety performance and SMS information. Section 673.29(a) requires transit agencies to include de-escalation and safety concern identification and reporting training in their comprehensive safety training program. This requirement applies to all agencies, not just large urbanized area providers.

This section also incorporates the statutory requirement that large urbanized area providers must include maintenance workers in their training programs.

Section 673.29(b) requires transit agencies to integrate the results of cooperation with frontline transit worker representatives and joint labor-management Safety Committee activities

into their safety communication activities. This requirement addresses the communication impacts resulting from the new requirements for cooperation with frontline transit worker representatives and Safety Committee activities and to make sure that the results of these activities are communicated throughout the organization.

Subpart E—Safety Plan Documentation and Recordkeeping

673.31—Safety Plan Documentation

This section requires each transit agency to keep records of its documents that are developed in accordance with this part. FTA expects a transit agency to maintain documents that set forth its ASP, including those related to the implementation of its SMS such as the results from SMS processes and activities. For the purpose of reviews, investigations, audits, or other purposes, this section requires each transit agency to make these documents available to FTA, SSOAs in the case of rail transit systems, States, and other Federal agencies as appropriate. A transit agency must maintain these documents for a minimum of three years.

IV. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Order 12866 (''Regulatory Planning and Review''), as supplemented by Executive Order 13563 (''Improving Regulation and Regulatory Review'') and Executive Order 14094 (''Modernizing Regulatory Review''), directs Federal agencies to assess the benefits and costs of regulations, to select regulatory approaches that maximize net benefits when possible, and to consider economic, environmental, and distributional effects. It also directs the Office of Management and Budget (OMB) to review significant regulatory actions, including regulations with annual economic effects of $200 million or more. OMB has determined the final rule is significant within the meaning of Executive Order 12866 and has reviewed the rule under that order.

Updates From the NPRM

The NPRM analysis assessed the benefits and costs of self-enacting statutory requirements as well as discretionary provisions. The analysis for the final rule clarifies which provisions are discretionary and assesses their benefits and costs separately, as described in ''Baseline.''

In addition, as described in ''II.N. Regulatory Impact Analysis,'' commenters on the NPRM requested that FTA reevaluate the staff and labor-hour assumptions it used to estimate costs for regulated entities to meet the requirements of the rule. After reviewing the assumptions, FTA made the following changes, which incorporate all the comments involving discretionary provisions of the rulemaking:

- *De-escalation training:* Added 2 hours in the first year and 2 hours in later years for agency staff to track employee training. The NPRM did not include hours for tracking employee training.
- *Continuous Improvement:* Added 2 hours per year for the Accountable Executive to participate. The NPRM did not include hours for the Accountable Executive.

Overview and Need for Regulation

The final rule adds requirements for transit agencies subject to the existing regulation for Public Transportation Agency Safety Plans. The applicable agencies include all RTAs and all transit agencies receiving section 5307 funding.

Most provisions implement self-enacting statutory amendments made by the Bipartisan Infrastructure Law to 49 U.S.C. 5329. Agencies in large urbanized areas must incorporate de-escalation training into their safety training programs and incorporate guidelines for infectious disease exposure into their safety management system processes. Agencies serving urbanized areas with 200,000 or more people must establish safety committees, safety risk reduction programs with safety performance targets, and include maintenance workers in their safety training programs. The agencies must allocate at least 0.75 percent of their section 5307 funding to eligible safety projects. If an agency does not meet a safety performance target established under its safety risk reduction program, it will need to allocate its set-aside funding to projects that are reasonably likely to assist the agency in meeting the target. Agencies serving urbanized areas with fewer than 200,000 people must develop their agency safety plans in cooperation with frontline transit worker representatives.

The final rule also includes discretionary requirements. The rule extends the de-escalation training requirement to all transit agencies subject to part 673. In addition, small public transportation providers must establish continuous improvement processes to assess safety performance; previous regulation required transit agencies to establish continuous improvement processes but exempted small public transportation providers.

Baseline for Analysis

The rule implements self-enacting statutory requirements as well as discretionary elements. Circular A–4 (p. 12) notes that, in such cases, the analysis can use a with-statute baseline, focusing on the discretionary elements of the rule and potential alternatives. Table 2 outlines the statutory and discretionary elements of the final rule.

TABLE 2—STATUTORY AND DISCRETIONARY RULE ELEMENTS

Provision	Statutory elements	Statutory citation	Discretionary elements
Safety Committee	Require transit providers in large UZAs to establish safety committees.	49 U.S.C. 5329(d)(5).	
	Require the plurality union to choose frontline worker representatives for the Safety Committee.	49 U.S.C. 5329(d)(5)(A)(ii)(I).	
	Require the Safety Committee to approve the Agency Safety Plan and conduct certain SMS activities.	49 U.S.C. 5329(d)(1)(A); 49 U.S.C. 5329(d)(5)(A)(iii).	
De-escalation training.	Require transit providers in large UZAs to incorporate de-escalation training into safety training programs.	49 U.S.C. 5329(d)(1)(H)	Extend new requirement to all transit agencies subject to part 673.
Risk Reduction Program.	Require transit providers in large UZAs to establish safety risk reduction programs with safety performance targets and engage in performance monitoring.	49 U.S.C. 5329(d)(1)(I); 49 U.S.C. 5329(d)(4).	
Continuous improvement.			Extend existing requirements for continuous improvement processes to small public transportation providers.

TABLE 2—STATUTORY AND DISCRETIONARY RULE ELEMENTS—Continued

Provision	Statutory elements	Statutory citation	Discretionary elements
Frontline transit worker cooperation.	Require small transit providers to develop agency safety plans in cooperation with frontline transit worker representatives.	49 U.S.C. 5329(d)(1)(B).	
Section 5307 funding allocation.	Requires transit providers in large UZAs to allocate at least 0.75 of Section 5307 funding to eligible safety projects and re reallocate the set-aside when risk reduction performance targets are not met.	49 U.S.C. 5329(d)(4)(B)–(D)).	

Benefits

The requirements for de-escalation training and continuous improvement processes are predicted to reduce the risk of fatalities and injuries for transit workers, passengers, drivers, and pedestrians if transit agencies adopt safety risk mitigations that they would not have adopted otherwise. Example mitigations include bus sensors and surveillance systems to detect objects and pedestrians, and bus operator barriers to protect drivers. At the same time, some mitigations, like de-escalation training for transit operators, have already been widely adopted. While FTA expects that providers will be more likely to adopt safety risk mitigations after implementing continuous improvement processes, it does not have information to quantify or monetize potential benefits.

Costs

All transit agencies subject to part 673 will incur costs to meet the new requirement for de-escalation training, and small public transportation providers will incur costs to meet the new requirement for continuous improvement processes. FTA determined that the requirements would affect 572 transit agencies (299 providers in large UZAs; 273 providers in small UZAs) and 62 rail transit authorities (58 in large UZAs; 4 in small UZAs), as well as 3 large agencies in small UZAs. While FTA will incur costs to notify agencies, update technical assistance resources, and conduct training, the expected costs are minimal.

To estimate the value of staff time spent on the requirements, FTA used occupational wage data from the Bureau of Labor Statistics as of May 2021 (Table 3).[37] FTA used median hourly wages for workers in the Transit and Ground Passenger Transportation industry (North American Industry Classification System code 485000) as a basis for the estimates, multiplied by 1.62 to account for employer benefits.[38] FTA then used the estimates to calculate costs for the first ten years of the rule from 2024—the assumed effective date of the rule—to 2033.

TABLE 3—OCCUPATIONAL CATEGORIES AND WAGES USED TO VALUE STAFF TIME

[$2021]

Staff	Occupational category	Code	Median hourly wage	Wage with benefits
Frontline personnel	Transportation and Material Moving Occupations	53–0000	$22.10	$35.72
HR manager	Human Resources Managers	11–3121	45.64	73.77
Accountable Executive	General and Operations Manager	11–1021	45.60	73.70
Chief Safety Officer	Health and Safety Engineers	17–2111	49.21	79.54
Safety manager	Occupational Health and Safety Specialists	19–5011	37.29	60.27

Source: Bureau of Labor Statistics, May 2021 National Occupational Employment and Wage Estimates.

De-Escalation Training

Table 4 outlines the estimated staff and labor hours for transit providers and rail transit agencies in small UZAs (273 small agencies; 3 large agencies; 4 rail transit authorities) to engage in de-escalation training and track employee training activities. Almost all agencies established programs after the Transportation Security Administration issued a security directive in January 2021 requiring mask use on public transportation.[39] The directive, which is no longer in effect as of April 2022,[40] required agencies to brief employees responsible for enforcing the directive. Agencies established de-escalation training programs as part of their briefings, and FTA developed free online training resources allowing frontline employees to complete training by themselves.[41] For these reasons, FTA estimates that 95 percent of employees already receive training, although agencies may not already engage in tracking of the training.

[37] Bureau of Labor Statistics (March 2022). ''May 2021 National Occupational Employment and Wage Estimates: United States.'' *https://www.bls.gov/oes/2021/may/oes_nat.htm.*

[38] Multiplier derived using Bureau of Labor Statistics data on employer costs for employee compensation for June 2022 (*https://www.bls.gov/news.release/archives/ecec_09202022.pdf*). Employer costs for state and local government workers averaged $55.47 an hour, with $34.23 for wages and $21.25 for benefit costs. To estimate full costs from wages, one would use a multiplier of $55.47/$34.23, or 1.62.

[39] Transportation Security Administration (January 31, 2021). ''Security Directive SD 1582/84–21–01.'' *https://www.tsa.gov/sites/default/files/sd-1582_84-21-01.pdf.*

[40] Transportation Security Administration (April 18, 2022). ''Statement regarding face mask use on public transportation.'' *https://www.tsa.gov/news/press/statements/2022/04/18/statement-regarding-face-mask-use-public-transportation.*

[41] Federal Transit Administration (October 2023). ''FTA-Sponsored Training Courses.'' *https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses.*

TABLE 4—STAFF AND HOURS NEEDED TO MEET DE-ESCALATION TRAINING REQUIREMENTS

Affected entities	Staff	First-year hours	Annual hours
280 providers and RTAs in small UZAs	Frontline personnel (5% of 14,800 employees; 740 employees total).	2	0.25
	HR manager (1 per entity)	2	2

Note: For the de-escalation training requirement, FTA uses an estimate of 0.5 hours every two years, for an average of 0.25 hours a year.

The training and tracking have estimated first-year costs of $94,000 in the first year and annual costs of $55,000 in later years (Table 5).

TABLE 5—FIRST-YEAR AND ANNUAL COSTS FOR DE-ESCALATION TRAINING

	Number	Hours	Wage with benefits	Total
First-year costs:				
Frontline personnel	740	2	$35.72	$52,866
HR managers	280	2	73.77	41,311
First-year total	.....	.....	.....	94,177
Annual costs:				
Frontline personnel	740	0.5	35.72	13,216
HR managers	280	2	73.77	41,311
Annual total	.....	.....	.....	54,528

Continuous Improvement Processes

Table 5 outlines the estimated staff and labor hours for small transit providers to maintain and establish continuous improvement processes. The hours include time to update the Agency Safety Plan to reflect new processes and to complete an annual assessment of safety performance.

TABLE 5—STAFF AND HOURS NEEDED TO MEET CONTINUOUS IMPROVEMENT PROCESS REQUIREMENTS

Affected entities	Staff	First-year hours	Annual hours
572 small public transit providers	Accountable Executive (1 per entity)	2	4
	Chief Safety Officer (1 per entity)	2	4
	Safety manager (1 per entity)	2	8

The continuous improvement processes have estimated first-year costs of $244,000 in the first year and annual costs of $626,000 in later years (Table 6).

TABLE 6—FIRST-YEAR AND ANNUAL COSTS FOR CONTINUOUS IMPROVEMENT PROCESSES

	Number	Hours	Wage with benefits	Total
First-year costs:				
Accountable Executive	572	2	$73.70	$84,313
Chief Safety Officer	572	2	79.54	90,994
Safety manager	572	2	60.27	68,949
First-year total	.....	.....	.....	244,255
Annual costs:				
Accountable Executive	572	4	73.70	168,626
Chief Safety Officer	572	4	79.54	181,988
Safety manager	572	8	60.27	275,796
Annual total	.....	.....	.....	626,409

Total Costs

The requirements for de-escalation training and continuous improvement processes have total estimated costs of $339,000 (2021 dollars) in the first year and annual costs of $680,000 in later years (Table 7).

TABLE 7—FIRST-YEAR COSTS AND ANNUAL COSTS FOR ADMINISTRATIVE AND REPORTING REQUIREMENTS

[$2021]

Requirement	First-year costs	Annual costs
De-escalation training	$94,177	$54,528
Continuous improvement processes	244,255	626,409
Total	338,432	680,936

Summary

Table 8 summarizes the economic effects of the final rule. Over the ten-year analysis period, the rule has estimated costs of $6.5 million in 2021 dollars. On an annualized basis (discounted to 2023), the rule has estimated costs of $642,000 at a 3 percent discount rate and $635,000 at 7 percent. To quantify benefits and assess net benefits, FTA would need information on the specific safety interventions transit agencies would adopt to address the requirements

TABLE 8—SUMMARY OF ECONOMIC EFFECTS, 2023–2033

[$2021, discounted to 2023]

Item	Total (undiscounted)	Annualized (3% discount)	Annualized (7% discount)
Benefits	Unquantified		
Costs:			
De-escalation training	$584,925	$59,040	$59,803
Continuous improvement processes	5,881,933	582,913	575,558
Total costs	6,466,858	641,954	635,362
Net benefits	Unquantified		

Regulatory Alternatives

While most requirements in the final rule are statutorily mandated, the rule includes two discretionary elements: de-escalation training for all transit agencies subject to part 673; and continuous improvement for small public transportation providers. In developing the rule, FTA considered whether to adopt the statutorily mandated requirements without modification. Because the rule uses a with-statute baseline for analysis, the rule would not have incremental costs or benefits under this regulatory alternative.

For de-escalation training, FTA considered data reported to the NTD on assaults on transit workers and found that these assaults occur on transit systems that serve large urbanized areas as well as those that serve small urbanized areas. Preliminary NTD data show that agencies serving small urbanized areas reported more than 300 assaults on transit workers from January 1, 2023 to December 31, 2023. FTA expects the number to increase after 2023 data are finalized and annual submissions from hundreds of smaller agencies are added. For this reason, FTA believes that requiring de-escalation training for operations personnel and personnel directly responsible for safety at all transit agencies subject to part 673 is appropriate and necessary to enhance safety for all transit workers and users of transportation, not just those in large urbanized areas. To minimize the de-escalation training burden on all transit agencies subject to part 673, FTA has made de-escalation training freely available to all transit agencies via the FTA-sponsored Assault Awareness and Prevention for Transit Operators courses offered by the National Transit Institute.[42]

For continuous improvement, FTA believes that requiring the processes for small public transportation providers eliminates possible inconsistencies in enforcement among small public transportation providers: some small public transportation providers operate in large urbanized areas and are therefore subject to statutory requirements for continuous improvement. In addition, small public transportation providers are already required to set safety performance targets based on the safety performance measures established in the National Safety Plan. Based on the experience that the providers have gained by operating SMS and carrying out required safety performance measurement activities, FTA expects that the providers will be able to formalize their continuous improvement activities and document them in their ASP.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*) requires Federal agencies to assess the impact of a regulation on small entities unless the agency determines that the regulation is not expected to have a significant economic impact on a substantial number of small entities. FTA has determined that the final rule does not have a significant effect on a substantial number of small entities.

Most provisions in the final rule implement self-enacting statutory amendments made by the Bipartisan Infrastructure Law to 49 U.S.C. 5329, although some provisions are discretionary. The provisions include extending the de-escalation training requirement to all transit agencies subject to part 673, as well as requiring small public transportation providers to establish continuous improvement processes.

Under the Act, local governments and other public-sector organizations qualify

[42] Federal Transit Administration (October 2023). ''FTA-Sponsored Training Courses.'' *https://www.transit.dot.gov/regulations-and-guidance/safety/fta-sponsored-training-courses.*

as a small entity if they serve a population of less than 50,000. The rule affects 280 agencies in small UZAs, with some qualifying as small entities under the Regulatory Flexibility Act. FTA estimates that, to meet the ongoing annual requirements for continuous improvement processes, a transit agency will need 4 hours of time for a Chief Safety Officer, 8 hours for a safety manager, and 2 hours for an Accountable Executive. To meet the ongoing annual requirements for de-escalation training, employees of a single agency would spend an average of 0.5 hours on annual refresher training, with an HR manager spending 2 hours on tracking and reporting. Using occupational wage data from the Bureau of Labor Statistics as of May 2021, FTA estimates the value of the time spent at $1,068.00, which would not have a significant effect on the agency.

Unfunded Mandates Reform Act of 1995

FTA has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995). This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted for inflation) in any one year. Additionally, the definition of ''Federal mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal Transit Act permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and FTA determined this action will not have a substantial direct effect or sufficient federalism implications on the States. FTA also determined this action will not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), and the White House Office of Management and Budget's (OMB) implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for a currently approved information collection that is associated with an existing regulation. The information collection (IC) was previously approved on October 4, 2022. However, this submission includes revised requirements authorized by the Bipartisan Infrastructure Law, including cooperation with frontline transit worker representatives in the development of an Agency Safety Plan (ASP), establishment of a Safety Committee, Safety Committee approval of an ASP, establishment of a safety risk reduction program for transit operations, establishment of safety performance targets for the safety risk reduction program, and establishment of strategies to minimize exposure to infectious diseases.

OMB Control Number: 2132–0580.

Type of Collection: Operators of public transportation systems.

Type of Review: OMB Clearance. Previously Approved Information Collection Request.

Summary of the Collection: The information collection includes (1) the development and certification of a Public Transportation Agency Safety Plan; (2) the implementation and documentation of the SMS approach; (3) associated recordkeeping; and (4) periodic requests.

Need for and Expected Use of the Information to be Collected: Collection of information for this program is necessary to ensure that operators of public transportation systems are performing their safety responsibilities and activities required by law at 49 U.S.C. 5329(d). Without the collection of this information, FTA would be unable to determine each recipient's and State's compliance with 49 U.S.C. 5329(d).

Respondents: Respondents include operators of public transportation as defined under 49 U.S.C. 5302. FTA is deferring regulatory action at this time on recipients of FTA financial assistance under 49 U.S.C. 5310 and/or 49 U.S.C. 5311, unless those recipients operate rail transit. The total number of respondents is 758. This figure includes 186 respondents that are States, rail fixed guideway systems, or large bus systems that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307. This figure also includes 572 respondents that receive Urbanized Area Formula Program funds under 49 U.S.C. 5307, operate one hundred or fewer vehicles in revenue service, and do not operate rail fixed guideway service that may draft and certify their own safety plans.

Frequency: Annual, Periodic.

National Environmental Policy Act

Federal agencies are required to adopt implementing procedures for the National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) Those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This rule qualifies for categorical exclusions under 23 CFR 771.118(c)(4) (planning and administrative activities that do not involve or lead directly to construction). FTA has evaluated whether the rule will involve unusual or extraordinary circumstances and has determined that it will not.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FTA does not believe this rule affects a taking of private property or otherwise has taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FTA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this action will not cause an environmental risk to health or safety

that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this rule under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FTA has determined that this action is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Orders 14096, 12898 (Environmental Justice)

Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All) (Apr. 21, 2023) (which builds upon Executive Order 12898) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) [43] require DOT agencies to make achieving environmental justice (EJ) part of their mission consistent with statutory authority by identifying, analyzing, and addressing, as appropriate, disproportionate and adverse human health or environmental effects, including those related to climate change and cumulative impacts of environmental and other burdens on communities with EJ concerns. All DOT agencies seek to advance these policy goals and to engage in this analysis as appropriate in rulemaking activities. On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for recipients of FTA financial assistance to incorporate EJ principles into plans, projects, and activities.[44]

FTA has evaluated this action under its environmental justice policies and FTA has determined that this action will not cause disproportionate and adverse human health and environmental effects on communities with EJ concerns.

Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this rule with the Unified Agenda.

List of Subjects in 49 CFR Part 673

Mass transportation, Reporting and recordkeeping requirements, Safety.

Veronica Vanterpool,

Acting Administrator.

■ In consideration of the foregoing, and under the authority of 49 U.S.C. 5329 and 5334, and the delegation of authority at 49 CFR 1.91, the Federal Transit Administration revises 49 CFR part 673 to read as follows:

PART 673—PUBLIC TRANSPORTATION AGENCY SAFETY PLANS

Subpart A—General

Sec.

Subpart B—Safety Plans

Subpart C—Safety Committees and Cooperation With Frontline Transit Worker Representatives

Subpart D—Safety Management Systems

Subpart E—Safety Plan Documentation and Recordkeeping

Authority: 49 U.S.C. 5329, 5334; 49 CFR 1.91.

Subpart A—General

§ 673.1 Applicability.

(a) This part applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. chapter 53.

(b) This part does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311 unless it operates a rail fixed guideway public transportation system.

§ 673.3 Policy.

The Federal Transit Administration (FTA) has adopted the principles and methods of Safety Management Systems (SMS) as the basis for enhancing the safety of public transportation in the United States. FTA will follow the principles and methods of SMS in its development of rules, regulations, policies, guidance, best practices, and technical assistance administered under the authority of 49 U.S.C. 5329. This part sets standards for the Public Transportation Agency Safety Plan, which will be responsive to FTA's Public Transportation Safety Program, and reflect the specific safety objectives, standards, and priorities of each transit agency. Each Public Transportation Agency Safety Plan will incorporate SMS principles and methods tailored to the size, complexity, and scope of the public transportation system and the environment in which it operates.

§ 673.5 Definitions.

As used in this part:

Accountable Executive means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a transit agency; responsibility for carrying out the transit agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the transit agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the transit agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

Assault on a transit worker means, as defined under 49 U.S.C. 5302, a circumstance in which an individual knowingly, without lawful authority or permission, and with intent to endanger the safety of any individual, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates a transit worker while the

[43] Department of Transportation Updated Environmental Justice Order 5610.2(a): Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 77 FR 27534 (May 10, 2012). *https://www.transportation.gov/transportation-policy/environmental-justice/department-transportation-order-56102a.*

[44] Federal Transit Administration (February 2020). ''Environmental Justice Policy Guidance for Federal Transit Administration Recipients.'' *https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/environmental-justice-policy-guidance-federal-transit.*

transit worker is performing the duties of the transit worker.

CDC means the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

Chief Safety Officer means an adequately trained individual who has responsibility for safety and reports directly to a transit agency's chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

Direct recipient means an entity that receives Federal financial assistance directly from the Federal Transit Administration.

Emergency means, as defined under 49 U.S.C. 5324, a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which the Governor of a State has declared an emergency and the Secretary has concurred; or the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Equivalent entity means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.

FTA means the Federal Transit Administration, an operating administration within the United States Department of Transportation.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Injury means any harm to persons as a result of an event that requires immediate medical attention away from the scene.

Investigation means the process of determining the causal and contributing factors of a safety event or hazard, for the purpose of preventing recurrence and mitigating safety risk.

Joint labor-management process means a formal approach to discuss topics affecting transit workers and the public transportation system.

Large urbanized area provider means a recipient or subrecipient of financial assistance under 49 U.S.C. 5307 that serves an urban area with a population of 200,000 or more as determined by the most recent decennial Census.

National Public Transportation Safety Plan means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. chapter 53.

Near-miss means a narrowly avoided safety event.

Operator of a public transportation system means a provider of public transportation.

Performance measure means an expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.

Potential consequence means the effect of a hazard.

Public transportation means, as defined under 49 U.S.C. 5302, regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include:

(1) Intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (or a successor to such entity);

(2) Intercity bus service;

(3) Charter bus service;

(4) School bus service;

(5) Sightseeing service;

(6) Courtesy shuttle service for patrons of one or more specific establishments; or

(7) Intra-terminal or intra-facility shuttle services.

Public Transportation Agency Safety Plan means the documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329 and this part.

Rail fixed guideway public transportation system means any fixed guideway system, or any such system in engineering or construction, that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration. These include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

Rail transit agency means any entity that provides services on a rail fixed guideway public transportation system.

Recipient means a State or local governmental authority, or any other operator of a public transportation system, that receives financial assistance under 49 U.S.C. chapter 53.

Roadway means land on which rail transit tracks and support infrastructure have been constructed to support the movement of rail transit vehicles, excluding station platforms.

Safety Assurance means processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Committee means the formal joint labor-management committee on issues related to safety that is required by 49 U.S.C. 5329 and this part.

Safety event means an unexpected outcome resulting in injury or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Safety Management management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities for the management of safety.

Safety Management System (SMS) means the formal, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing hazards and safety risk.

Safety Management System (SMS) Executive means a Chief Safety Officer or an equivalent.

Safety performance target means a quantifiable level of performance or condition, expressed as a value for the measure, related to safety management activities, to be achieved within a specified time period.

Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.

Safety risk means the composite of predicted severity and likelihood of a potential consequence of a hazard.

Safety risk assessment means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risk.

Safety risk management means a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating the safety risk of their potential consequences.

Safety risk mitigation means a method or methods to eliminate or reduce the

severity and/or likelihood of a potential consequence of a hazard.

Safety set-aside means the allocation of not less than 0.75 percent of assistance received by a large urbanized area provider under 49 U.S.C. 5307 to safety-related projects eligible under 49 U.S.C. 5307.

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service across all non-rail fixed route modes or in any one non-fixed route mode and does not operate a rail fixed guideway public transportation system.

State means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

State of good repair means the condition in which a capital asset is able to operate at a full level of performance.

State Safety Oversight Agency means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and (k) and the regulations set forth in 49 CFR part 674.

Subrecipient means an entity that receives Federal transit grant funds indirectly through a State or a direct recipient.

Transit agency means an operator of a public transportation system that is a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 or a rail transit agency.

Transit Asset Management Plan means the strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR part 625.

Transit worker means any employee, contractor, or volunteer working on behalf of the transit agency.

Urbanized area means, as defined under 49 U.S.C. 5302, an area encompassing a population of 50,000 or more that has been defined and designated in the most recent decennial census as an urban area by the Secretary of Commerce.

Subpart B—Safety Plans

§ 673.11 General requirements.

(a) A transit agency or State must establish a Public Transportation Agency Safety Plan that meets the requirements of this part and, at a minimum, consists of the following elements:

(1) The Public Transportation Agency Safety Plan, and subsequent updates, must be signed by the Accountable Executive and approved by—

(i) For a large urbanized area provider, the Safety Committee established pursuant to § 673.19, followed by the transit agency's Board of Directors or an equivalent entity; or

(ii) For all other transit agencies, the transit agency's Board of Directors or an equivalent entity.

(2) The Public Transportation Agency Safety Plan must document the processes and activities related to Safety Management System (SMS) implementation, as required under subpart D of this part.

(3) The Public Transportation Agency Safety Plan must include annual safety performance targets based on the safety performance measures established under the National Public Transportation Safety Plan. Safety performance targets for the safety risk reduction program are only required for large urbanized area providers.

(4) The Public Transportation Agency Safety Plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance with the minimum safety performance standards authorized under 49 U.S.C. 5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.

(5) Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan.

(6) A rail transit agency must include or incorporate by reference in its Public Transportation Agency Safety Plan:

(i) An emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of transit worker responsibilities during an emergency; and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area;

(ii) Any policies and procedures regarding rail transit workers on the roadway the rail transit agency has issued; and

(iii) The transit agency's policies and procedures developed in consultation with the State Safety Oversight Agency to provide access and required data for the State Safety Oversight Agency's risk-based inspection program.

(7) The Public Transportation Agency Safety Plan of each large urbanized area provider must include a safety risk reduction program for transit operations to improve safety performance by reducing the number and rates of safety events, injuries, and assaults on transit workers. The safety risk reduction program must, at a minimum:

(i) Address the reduction and mitigation of vehicular and pedestrian safety events involving transit vehicles that includes safety risk mitigations consistent with § 673.25(d)(3);

(ii) Address the reduction and mitigation of assaults on transit workers that includes safety risk mitigations consistent with § 673.25(d)(4);

(iii) Include the safety performance targets set by the Safety Committee pursuant to § 673.19(d)(2) for the safety risk reduction program performance measures established in the National Public Transportation Safety Plan. These targets must be set—

(A) Based on a three-year rolling average of the data submitted by the large urbanized area provider to the National Transit Database (NTD);

(B) For all modes of public transportation; and

(C) Based on the level of detail the large urbanized area provider is required to report to the NTD. The Safety Committee is not required to set a target for a performance measure until the large urbanized area provider has been required to report three years of data to the NTD corresponding to such performance measure.

(iv) Include or incorporate by reference the safety risk mitigations identified and recommended by the Safety Committee as described in § 673.25(d)(5).

(b) A transit agency may develop one Public Transportation Agency Safety Plan for all modes of service or may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity.

(c) A transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements in subpart E of this part.

(d) A State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider that is located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a small public transportation provider if that transit agency notifies the State that it will draft its own plan. In each instance, the transit agency must carry out the plan. If a State drafts and certifies a Public Transportation Agency Safety Plan on behalf of a transit agency, and the transit agency later opts to draft and certify its own Public Transportation Agency Safety Plan, then the transit agency must notify the State. The transit agency has one year from the date of the notification to draft and certify a Public Transportation Agency Safety Plan that is compliant with this part. The Public Transportation Agency Safety Plan drafted by the State will remain in effect until the transit agency drafts its own Public Transportation Agency Safety Plan.

(e) Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) are not required to develop Public Transportation Agency Safety Plans for those modes of service.

§ 673.13 Certification of compliance.

(a) Each direct recipient, or State as authorized in § 673.11(d), must certify that it has established a Public Transportation Agency Safety Plan meeting the requirements of this part by the start of operations. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part. A State Safety Oversight Agency must review and approve a Public Transportation Agency Safety Plan developed by a rail fixed guideway public transportation system, as authorized in 49 U.S.C. 5329(e) and its implementing regulations at 49 CFR part 674.

(b) On an annual basis, a direct recipient or State must certify its compliance with this part. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part.

§ 673.15 Coordination with metropolitan, statewide, and non-metropolitan planning processes.

(a) A State or transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process.

(b) To the maximum extent practicable, a State or transit agency must coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

Subpart C—Safety Committees and Cooperation With Frontline Transit Worker Representatives

§ 673.17 Cooperation with frontline transit worker representatives.

(a) Each large urbanized area provider must establish a Safety Committee that meets the requirements of § 673.19.

(b) Each transit agency that is not a large urbanized area provider must:

(1) Develop its Public Transportation Agency Safety Plan, and subsequent updates, in cooperation with frontline transit worker representatives; and

(2) Include or incorporate by reference in its Public Transportation Agency Safety Plan a description of how frontline transit worker representatives cooperate in the development and update of the Public Transportation Agency Safety Plan.

§ 673.19 Safety Committees.

(a) *Establishing the Safety Committee.* Each large urbanized area provider must establish and operate a Safety Committee that is:

(1) Appropriately scaled to the size, scope, and complexity of the transit agency; and

(2) Convened by a joint labor-management process.

(b) *Safety Committee membership.* The Safety Committee must consist of an equal number of frontline transit worker representatives and management representatives. To the extent practicable, the Safety Committee must include frontline transit worker representatives from major transit service functions, such as operations and maintenance, across the transit system.

(1) The labor organization that represents the plurality of the transit agency's frontline transit workers must select frontline transit worker representatives for the Safety Committee.

(2) If the transit agency's frontline transit workers are not represented by a labor organization, the transit agency must adopt a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

(c) *Safety Committee procedures.* Each large urbanized area provider must include or incorporate by reference in its Public Transportation Agency Safety Plan procedures regarding the composition, responsibilities, and operations of the Safety Committee which, at a minimum, must address:

(1) The organizational structure, size, and composition of the Safety Committee and how it will be chaired;

(2) How meeting agendas and notices will be developed and shared, and how meeting minutes will be recorded and maintained;

(3) Any required training for Safety Committee members related to the transit agency's Public Transportation Agency Safety Plan and the processes, activities, and tools used to support the transit agency's SMS;

(4) The compensation policy established by the agency for participation in Safety Committee meetings;

(5) How the Safety Committee will access technical experts, including other transit workers, to serve in an advisory capacity as needed; transit agency information, resources, and tools; and submissions to the transit worker safety reporting program to support its deliberations;

(6) How the Safety Committee will reach and record decisions;

(7) How the Safety Committee will coordinate and communicate with the transit agency's Board of Directors, or equivalent entity, and the Accountable Executive;

(8) How the Safety Committee will manage disputes to ensure it carries out its operations. The Safety Committee may use the dispute resolution or arbitration process from the transit agency's Collective Bargaining Agreement, or a different process that the Safety Committee develops and agrees upon, but the Accountable Executive may not be designated to resolve any disputes within the Safety Committee; and

(9) How the Safety Committee will carry out its responsibilities identified in paragraph (d) of this section.

(d) *Safety Committee responsibilities.* The Safety Committee must conduct the following activities to oversee the transit agency's safety performance:

(1) Review and approve the transit agency's Public Transportation Agency Safety Plan and any updates as required at § 673.11(a)(1)(i);

(2) Set annual safety performance targets for the safety risk reduction program as required at § 673.11(a)(7)(iii); and

(3) Support operation of the transit agency's SMS by:

(i) Identifying and recommending safety risk mitigations necessary to reduce the likelihood and severity of

potential consequences identified through the transit agency's safety risk assessment, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program;

(ii) Identifying safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program; and

(iii) Identifying safety deficiencies for purposes of continuous improvement as required at § 673.27(d), including any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program.

Subpart D—Safety Management Systems

§ 673.21 General requirements.

Each transit agency must establish and implement a Safety Management System under this part. A transit agency Safety Management System must be appropriately scaled to the size, scope and complexity of the transit agency and include the following elements:

(a) Safety Management Policy as described in § 673.23;

(b) Safety Risk Management as described in § 673.25;

(c) Safety Assurance as described in § 673.27; and

(d) Safety Promotion as described in § 673.29.

§ 673.23 Safety Management Policy.

(a) A transit agency must establish its organizational accountabilities and responsibilities and have a written statement of Safety Management Policy that includes the transit agency's safety objectives and a description of the transit agency's Safety Committee or approach to cooperation with frontline transit worker representatives.

(b) A transit agency must establish and implement a process that allows transit workers to report safety concerns, including assaults on transit workers, near-misses, and unsafe acts and conditions to senior management, includes protections for transit workers who report, and includes a description of transit worker behaviors that may result in disciplinary action.

(c) The Safety Management Policy must be communicated throughout the transit agency's organization.

(d) The transit agency must establish the necessary authorities, accountabilities, and responsibilities for the management of safety amongst the following individuals or groups within its organization, as they relate to the development and management of the transit agency's SMS:

(1) *Accountable Executive.* The transit agency must identify an Accountable Executive. The Accountable Executive is accountable for ensuring that the transit agency's SMS is effectively implemented throughout the transit agency's public transportation system. The Accountable Executive is accountable for ensuring action is taken, as necessary, to address substandard performance in the transit agency's SMS. The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for the transit agency's safety performance cannot be delegated and always rests with the Accountable Executive.

(i) The Accountable Executive of a large urbanized area provider must implement safety risk mitigations for the safety risk reduction program that are included in the Agency Safety Plan under § 673.11(a)(7)(iv).

(ii) The Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigations recommended by the Safety Committee, consistent with requirements in §§ 673.19(d) and 673.25(d)(6).

(2) *Chief Safety Officer or Safety Management System (SMS) Executive.* The Accountable Executive must designate a Chief Safety Officer or SMS Executive who has the authority and responsibility for day-to-day implementation and operation of a transit agency's SMS. The Chief Safety Officer or SMS Executive must hold a direct line of reporting to the Accountable Executive. A transit agency may allow the Accountable Executive to also serve as the Chief Safety Officer or SMS Executive.

(3) *Safety Committee.* A large urbanized area provider must establish a joint labor-management Safety Committee that meets the requirements of § 673.19.

(4) *Transit agency leadership and executive management.* A transit agency must identify those members of its leadership or executive management, other than an Accountable Executive, Chief Safety Officer, or SMS Executive, who have authorities or responsibilities for day-to-day implementation and operation of a transit agency's SMS.

(5) *Key staff.* A transit agency may designate key staff, groups of staff, or committees to support the Accountable Executive, Chief Safety Officer, Safety Committee, or SMS Executive in developing, implementing, and operating the transit agency's SMS.

§ 673.25 Safety Risk Management.

(a) *Safety Risk Management process.* A transit agency must develop and implement a Safety Risk Management process for all elements of its public transportation system. The Safety Risk Management process must be comprised of the following activities: hazard identification, safety risk assessment, and safety risk mitigation.

(b) *Hazard identification.* (1) A transit agency must establish methods or processes to identify hazards and potential consequences of the hazards.

(2) A transit agency must consider, as a source for hazard identification:

(i) Data and information provided by an oversight authority, including but not limited to FTA, the State, or as applicable, the State Safety Oversight Agency having jurisdiction;

(ii) Data and information regarding exposure to infectious disease provided by the CDC or a State health authority; and

(iii) Safety concerns identified through Safety Assurance activities carried out under § 673.27.

(c) *Safety risk assessment.* (1) A transit agency must establish methods or processes to assess the safety risk associated with identified hazards.

(2) A safety risk assessment includes an assessment of the likelihood and severity of the potential consequences of identified hazards, taking into account existing safety risk mitigations, to determine if safety risk mitigation is necessary and to inform prioritization of safety risk mitigations.

(d) *Safety risk mitigation.* (1) A transit agency must establish methods or processes to identify safety risk mitigations or strategies necessary as a result of the transit agency's safety risk assessment to reduce the likelihood and severity of the potential consequences. For large urbanized area providers, these methods or processes must address the role of the transit agency's Safety Committee.

(2) A transit agency must consider, as a source for safety risk mitigation:

(i) Guidance provided by an oversight authority, if applicable, and FTA; and

(ii) Guidelines to prevent or control exposure to infectious diseases provided by the CDC or a State health authority.

(3) When identifying safety risk mitigations for the safety risk reduction program related to vehicular and pedestrian safety events involving transit vehicles, including to address a missed safety performance target set by the Safety Committee under § 673.19(d)(2), each large urbanized area

provider and its Safety Committee must consider mitigations to reduce visibility impairments for transit vehicle operators that contribute to accidents, including retrofits to vehicles in revenue service and specifications for future procurements that reduce visibility impairments.

(4) When identifying safety risk mitigations for the safety risk reduction program related to assaults on transit workers, including to address a missed safety performance target set by the Safety Committee under § 673.19(d)(2), each large urbanized area provider and its Safety Committee must consider deployment of assault mitigation infrastructure and technology on transit vehicles and in transit facilities. Assault mitigation infrastructure and technology includes barriers to restrict the unwanted entry of individuals and objects into the workstations of bus operators.

(5) When a large urbanized area provider's Safety Committee, as part of the transit agency's safety risk reduction program, identifies and recommends under § 673.19(c)(6) safety risk mitigations, including mitigations relating to vehicular and pedestrian safety events involving transit vehicles or assaults on transit workers, based on a safety risk assessment conducted under § 673.25(c), the transit agency must include or incorporate by reference these safety risk mitigations in its ASP pursuant to § 673.11(a)(7)(iv).

(6) When a large urbanized area provider's Safety Committee recommends a safety risk mitigation unrelated to the safety risk reduction program, and the Accountable Executive decides not to implement the safety risk mitigation, the Accountable Executive must prepare a written statement explaining their decision, pursuant to recordkeeping requirements at § 673.31. The Accountable Executive must submit and present this explanation to the transit agency's Safety Committee and Board of Directors or equivalent entity.

§ 673.27 Safety Assurance.

(a) *Safety Assurance process.* A transit agency must develop and implement a Safety Assurance process, consistent with this subpart. A rail fixed guideway public transportation system, and a recipient or subrecipient of Federal financial assistance under 49 U.S.C. chapter 53 that operates more than one hundred vehicles in peak revenue service, must include in its Safety Assurance process each of the requirements in paragraphs (b), (c), and (d) of this section. A small public transportation provider only must include in its Safety Assurance process the requirements in paragraphs (b) and (d) of this section.

(b) *Safety performance monitoring and measurement.* A transit agency must establish activities to:

(1) Monitor its system for compliance with, and sufficiency of, the transit agency's procedures for operations and maintenance;

(2) Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended. For large urbanized area providers, these activities must address the role of the transit agency's Safety Committee;

(3) Conduct investigations of safety events to identify causal factors; and

(4) Monitor information reported through any internal safety reporting programs.

(c) *Management of change.* (1) A transit agency must establish a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's safety performance.

(2) If a transit agency determines that a change may impact its safety performance, then the transit agency must evaluate the proposed change through its Safety Risk Management process.

(d) *Continuous improvement.* (1) A transit agency must establish a process to assess its safety performance annually.

(i) This process must include the identification of deficiencies in the transit agency's SMS and deficiencies in the transit agency's performance against safety performance targets required in § 673.11(a)(3).

(ii) For large urbanized area providers, this process must also address the role of the transit agency's Safety Committee, and include the identification of deficiencies in the transit agency's performance against annual safety performance targets set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program required in § 673.11(a)(7).

(iii) Rail transit agencies must also address any specific internal safety review requirements established by their State Safety Oversight Agency.

(2) A large urbanized area provider must monitor safety performance against annual safety performance targets set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program in § 673.11(a)(7).

(3) A large urbanized area provider that does not meet an established annual safety performance target set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program in § 673.11(a)(7) must:

(i) Assess associated safety risk, using the methods or processes established under § 673.25(c);

(ii) Mitigate associated safety risk based on the results of a safety risk assessment using the methods or processes established under § 673.25(d). The transit agency must include these mitigations in the plan described at § 673.27(d)(4) and in the Agency Safety Plan as described in § 673.25(d)(5); and

(iii) Allocate its safety set-aside in the following fiscal year to safety-related projects eligible under 49 U.S.C. 5307 that are reasonably likely to assist the transit agency in meeting the safety performance target in the future.

(4) A transit agency must develop and carry out, under the direction of the Accountable Executive, a plan to address any deficiencies identified through the safety performance assessment as described in this section.

§ 673.29 Safety Promotion.

(a) *Competencies and training.* (1) A transit agency must establish and implement a comprehensive safety training program that includes de-escalation training, safety concern identification and reporting training, and refresher training for all operations transit workers and transit workers directly responsible for safety in the transit agency's public transportation system. The training program must include refresher training, as necessary.

(2) Large urbanized area providers must include maintenance transit workers in the safety training program.

(b) *Safety communication.* A transit agency must communicate safety and safety performance information throughout the transit agency's organization that, at a minimum, conveys information on hazards and safety risk relevant to transit workers' roles and responsibilities and informs transit workers of safety actions taken in response to reports submitted through a transit worker safety reporting program. A transit agency must also communicate the results of cooperation with frontline transit worker representatives as described at § 673.17(b) or the Safety Committee activities described in § 673.19.

Subpart E—Safety Plan Documentation and Recordkeeping

§ 673.31 Safety plan documentation.

At all times, a transit agency must maintain documents that set forth its Public Transportation Agency Safety Plan, including those related to the implementation of its SMS, and results

from SMS processes and activities. A transit agency must maintain documents that are included in whole, or by reference, that describe the programs, policies, and procedures that the transit agency uses to carry out its Public Transportation Agency Safety Plan. These documents must be made available upon request by FTA or other Federal entity, or a State or State Safety Oversight Agency having jurisdiction. A transit agency must maintain these documents for a minimum of three years after they are created.

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Part III

The President

Proclamation 10726—National Former Prisoner of War Recognition Day, 2024

Federal Register
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Thursday, April 11, 2024

Presidential Documents

Title 3—

The President

Proclamation 10726 of April 8, 2024

National Former Prisoner of War Recognition Day, 2024

By the President of the United States of America

A Proclamation

On this day, we honor the more than half a million brave patriots who sacrificed their freedom as prisoners of war—risking their own safety for the safety of their fellow Americans. We recommit to fulfilling our country's one truly sacred obligation: to prepare and equip those we send into harm's way and to care for them and their families when they return home and when they do not.

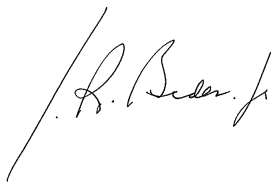
Last September, I visited a memorial in Hanoi for my friend, former United States Senator John McCain, who had been imprisoned there for five and a half years when he was a Lieutenant Commander in the Navy. I reflected on the unfathomable conditions and pain that he and so many others have endured as prisoners of war. It was a solemn reminder of the grave costs of war and the immense sacrifices American service members are willing to make to defend our Nation. They have always embodied the highest expectations of our democracy—daring all and risking all so that our country remains free and our people remain safe. We owe them and their families, caregivers, and survivors a debt of gratitude we can never fully repay but will never cease trying to fulfill.

Today, and every day, we recommit to this vow. We honor the unbending courage and unshakable devotion of our former prisoners of war. We reaffirm our commitment to bringing home all those still missing or unaccounted for. We pledge to keep faith in all these heroes and their families—just as they have kept ultimate faith in our Nation.

May God bless our former prisoners of war and their families, caregivers, and survivors—and may God protect our troops.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2024, as National Former Prisoner of War Recognition Day. I call upon Americans to observe this day by honoring the service and sacrifice of all former prisoners of war as our Nation expresses its eternal gratitude for their service. I also call upon Federal, State, and local government officials and organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-eighth.



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FEDERAL REGISTER PAGES AND DATE, APRIL

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

274.....24372
275.....24693
279.....24693

18 CFR

Proposed Rules:
284.....23954

19 CFR

12.....25130

20 CFR

416.....25507

21 CFR

1308.....25514, 25517
Proposed Rules:
1308.....24750, 25544

22 CFR

303.....25519

24 CFR

115.....22934
125.....22934
Proposed Rules:
5.....25332
245.....25332
882.....25332
960.....25332
966.....25332
982.....25332

26 CFR

54.....23338
Proposed Rules:
1 .....22971, 24396, 25550, 25551
54.....22971
301.....22971

27 CFR

9.....24378

29 CFR

102.....24713
1903.....22558
2550.....23090
2590.....23338
Proposed Rules:
2510.....22971
2520.....22971
2550.....22971
4000.....22971
4007.....22971
4010.....22971
4041.....22971
4041A.....22971
4043.....22971
4050.....22971
4062.....22971
4063.....22971
4204.....22971
4211.....22971
4219.....22971
4231.....22971
4245.....22971
4262.....22971
4281.....22971

30 CFR

723.....23908
724.....23908
733.....24714
842.....24714
845.....23908
846.....23908

33 CFR

1.....22942
5.....22942
100.....25139, 25531
104.....22942
117.....24381, 24383
151.....22942
155.....22942
161.....22942
164.....22942
165 .....22637, 22942, 23512, 23911, 23914, 24385, 24387, 25140
174.....22942
175.....22942
Proposed Rules:
101.....24751
110.....25197
117.....24396, 25198
160.....24751
165.....22645, 25553

34 CFR

Ch. VI.....23514

36 CFR

242.....22949

37 CFR

Proposed Rules:
1.....23226
41.....23226
42.....23226

38 CFR

17.....23518
36.....25142
Proposed Rules:
76.....24752

39 CFR

Proposed Rules:
3030.....25554

40 CFR

52 .....22337, 22963, 23521, 23523, 23526, 23916, 24389
60.....24090
63 .....23294, 23840, 24090
75.....23526
78.....23526
81.....25144
97.....23526
180.....25531
Proposed Rules:
52 .....22363, 22648, 25200, 25216, 25223, 25555
131.....24758
721.....24398
751.....22972

41 CFR

Proposed Rules:
102–118.....24775

42 CFR

411.....25144
413.....25144
431.....22780
435.....22780
436.....22780
447.....22780
457.....22780
488.....25144
489.....25144
600.....22780
Proposed Rules:
412.....23146
413.....23424
418.....23778
488.....23424

43 CFR

3160.....25378
3170.....25378

44 CFR

Proposed Rules:
61.....24415

45 CFR

144.....23338
146.....23338
148.....23338

46 CFR

3.....22942
15.....22942
70.....22942
117.....22942
118.....22942
119.....22942
147.....22942

47 CFR

2.....23527
4.....25535
36.....25147
51.....25147
54.....25147

48 CFR

Ch. 1.....22604, 22605
40.....22604
519.....22638
538.....22966
552.....22638, 22966

49 CFR

23.....24898
26.....24898
171.....25434
172.....25434
173.....25434
175.....25434
176.....25434
178.....25434
180.....25434
218.....25052
673.....25694

50 CFR

17.....22522, 23919
100.....22949
217.....25163
300.....22966
402.....24268
424.....24300
648.....23941
660.....22342, 22352
665.....23949
679.....23949, 24736
Proposed Rules:
17 .....22649, 23534, 24415
635.....24416
679.....23535

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List March 26, 2024

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